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The doctrine that legal validity attaches to the acts of public officers, who, having an official semblance, are in fact destitute of all authentic title, is true only so far as there is public necessity for its assertion and no further. If in the ordinary affairs of business, all persons were bound to verify the titles of public officials before they could rely upon their acts, the burden would be intolerable. It is not too much to say that a considerable part of such business could not be transacted under the pressure of such a rule. It is always to be deprecated that the act of a usurper of office should have a legal sanction conferred upon it; but this result obtains by reason of the great public inconvenience that its rejection would introduce. To this extent, and on this ground, the law legalizes the act of the intruder. It is obvious, therefore, that public utility is the sole reason that can be assigned in favor of the prevalence of the doctrine; and it is thus manifest that such doctrine is a judicial creation, and, consequently, it is not to be applied in the regulation of any case that does not plainly fall within the principle in which it has originated. Applying this doctrine, the Supreme Court of New Jersey has recently held, in the case of Mayor, etc. v. Erwin, that a *de facto* board cannot create a *de jure* officer, and that where two persons acted as *de facto* city attorney of a city, whose charter provided for the appointment of a single person as such city attorney, while the acts of each were valid with respect to strangers, neither could maintain a suit for the official salary.

The recent case of Mitchell v. Rochester Ry. Co., 45 N. E. Rep. 354, decided by the Court of Appeals of New York, involves, to some extent, what is known as the Texas doctrine, *i. e.*, the recovery of damages for mere mental suffering or shock. But it goes further, holding that damages are not recoverable for physical injuries resulting from mental shock. It appeared that while plaintiff was standing upon the crosswalk of a city street, awaiting an opportunity to enter one of the defendant's cars which had stopped upon the street at that place, another of defendant's cars came down the street at such speed that its driver was unable to stop it before it reached the car which plaintiff was about to take. The horses attached to the approaching car turned to the side where plaintiff was standing, and before they were checked had come to her so that their heads were on either side of her and she was almost run down by them. The fright and excitement made plaintiff unconscious, and she suffered a miscarriage and was ill for a long time. The court held that no recovery can be had for injuries resulting from fright caused by the negligence of another where no immediate personal injury is received, saying, that "while the authorities are not harmonious upon this question, we think the most reliable and better considered cases, as well as public policy, fully justify us in holding that the plaintiff cannot recover for injuries occasioned by fright, as there was no immediate personal injury. * * * If it be admitted that no recovery can be had for fright occasioned by the negligence of another, it is somewhat difficult to understand how a defendant would be liable for its consequences. Assuming that fright cannot form the basis of an action, it is obvious that no recovery can be had for injuries resulting therefrom. That the result may be nervous disease, blindness, insanity, or even a miscarriage, in no way changes the principle. These results merely show the degree of fright, or the extent of the damages. The right of action must still depend upon the question whether a recovery may be had for fright. If it can, then an action may be maintained, however slight the injury. If not, then there can be no recovery, no matter how grave or serious the consequences. Therefore, the logical result of the respondent's concession would seem to be, not only that no recovery can be had for mere fright, but also that none can be had for injuries which are the direct consequences of it. If the right of recovery in this class of cases should be once established, it would naturally result in a flood of litigation in cases where the injury complained of may be easily feigned without detection, and where the damages must rest upon mere conjecture or speculation. The difficulty which often exists in cases of alleged physical injury, in determining whether they exist, and, if so,

whether they were caused by the negligent act of the defendant, would not only be greatly increased, but a wide field would be opened for fictitious or speculative claims. To establish such a doctrine would be contrary to principles of public policy." The *New York Law Journal* in a review of this case makes the following pertinent criticism: "With the utmost respect for the opinion of our court of last resort, we believe that a sound theoretical distinction may be drawn between permitting recovery for fright and for the physical consequences of fright. The damages sustained through mental shock itself are not estimable or susceptible of compensation pecuniarily. Permitting recovery therefor involves the theoretical vice of the 'Texas doctrine'—the granting of damages in a civil action which are purely punitive, without any basis of actual damage to sustain them. On the other hand, physical injury, resulting from mental shock or suffering, may entail expense for medical attendance, incapacity for work and the usual train of evils for which recovery is allowed in cases of direct physical calamity. On the score of practical public policy, however, it is not improbable that the present decision is a wise one. The fostering of groundless and speculative litigation by the recognition of the 'Texas doctrine' has been complained of by the courts of Texas itself."

NOTES OF RECENT DECISIONS.

INSURANCE POLICY — CONSTRUCTION—TIME COMPUTATION.—In Walker v. John Hancock Mut. Life Ins. Co., 45 N. E. Rep. 89, before the Supreme Judicial Court of Massachusetts, it appeared that a life insurance policy provided that the full amount of the policy should be paid only in the event that insured died "after one year from the date of the policy." The policy took effect on the day of its date. It was held that, in computing the year, the day of the date of the policy should be excluded. The question was whether the insured died "after one year from the date of the policy," and the answer depends on whether the day of the date of the policy is to be included in the year or excluded. In the absence of anything tending to show a contrary intention, the words "from the date," exclude the day of date. See Seward v. Hayden, 150 Mass. 158, 22 N. E. Rep. 629; Kendall v. Kingsley, 120 Mass. 94; Bemis v. Leonard, 118 Mass. 502; Fuller v. Russell, 6 Gray, 128; Buttrick v. Holden, 8 Cush. 233; Inhabitants of Seekonk v. Inhabitants of Rehoboth, *Id.* 371; Bigelow v. Wilson, 1 Peck. 485; Isaacs v. Insurance Co., L. R. 5 Exch. 296. The plaintiff contended in substance, that the policy took effect on the day of its date, and that, therefore, the words "from the date" are to be construed inclusively, rather than exclusively, and that such must have been the intention of the parties. But the court said that "the fact that the policy took effect on one date and not on another has of itself no tendency to show that it is to be paid on one date and not on another. The operative words are those which relate to the payment of the insurance, and not to its attachment. Those provide that the full amount is not to be paid till after one year from the date of the policy. The time of payment is fixed by providing not only that it shall be one year from the date of the policy, but also that it shall be one year after that date, excluding, as it seems to us, the date of the policy."

NEGOTIABLE INSTRUMENT — NOTE PAYABLE TO TRUSTEE.—The question as to whether a note payable to one as trustee is negotiable is a subject of dispute in the authorities or adjudged cases. In Maryland it seems to have been held that such a note is not commercial paper, and that an indorsement of it by the trustee transfers it, subject to the trust, and that, after such transfer, it is open to the equitable defenses between the original parties. Bank v. Lange, 51 Md. 139. But it is holden in other jurisdictions that a note to and indorsed by one as trustee of a named person does not carry to an innocent purchaser any notice of a restriction upon the payee's right to transfer it. Downer v. Read, 17 Minn. 493 (Gil. 470); Bush v. Peckard, 3 Har. (Del.) 385; citing Rand. Com. Paper, § 158, p. 242; Davis v. Garr, 6 N. Y. 124, 55 Am. Dec. 387, and note; Pierce v. Robie, 63 Am. Dec. 614; Conner v. Clark, 73 Am. Dec. 529. As a general thing, the addition of the words "trustee" and the like will be treated as *descriptio personæ*. Authorities *supra;* 2 Am. & Eng. Enc. Law, p. 358, notes on pages 358 and

359. The Supreme Court of Chancery Appeals of Tennessee has recently considered this question in the case of Fox v. Citizens' Bank & Trust Co., 37 S. W. Rep. 1102, holding that the addition of the word "trustee" to the name of the payee of a note does not of itself destroy its negotiability. They say that "the decided weight of authority and, it seems to us, of sound reason, supports the position that the addition of the word "trustee" to the name of the payee of a note of itself does not destroy its negotiability. Under the rules of the common law, all conveyances by a trustee, whether to innocent purchaser or not, even if made in contravention of the trust, operated upon the legal title, and vested it in the grantee. The beneficiary had to go into equity, and there he could compel the grantee to respect the trust, as the original trustee should have done. Gale v. Mensing, 20 Mo. 461, 64 Am. Dec. 197, and notes. See, also, Tyler v. Herring, 67 Miss. 169, 6 South. Rep. 840, 19 Am. St. Rep. 263, and extended note, where the subject, with the authorities, is fully presented."

CRIMINAL LAW—INTERSTATE EXTRADITION—WARRANTS PROCURED BY FALSE AFFIDAVIT.—When a prisoner is committed for trial on a criminal charge, under State process which is in itself regular and valid, his imprisonment is not rendered illegal by the fact that he was brought back from another State as a fugitive from justice, by means of extradition warrants procured by false affidavits; and the federal courts will not release him on *habeas corpus* on that ground alone. This proposition of law was applied by the United States District Court of Oregon in *In re* Moore, 75 Fed. Rep. 821, and is the necessary result of the doctrine that a fugitive who has been kidnapped and brought back into the State where his offense was committed is not entitled to release on *habeas corpus*. See *American Law Register & Review* for December, 1896, p. 782, containing note on the subject, citing the following cases, viz: *Ex parte* Scott, 9 B. & C. 446, 1829; *Ex parte* Ker, 18 Fed. Rep. 167, 1883; Ker v. Illinois, 119 U. S. 436, 1886, affirming Ker v. People, 110 Ill. 627, 1884; Mahon v. Justice, 127 U. S. 700, 1888, affirming 34 Fed. Rep. 525, 1888; State v. Ross, 21 Iowa, 467, 1866; Dows' Case, 18 Pa. 37, 1851; State v. Smith, 1 Bailey (S. Car.), 283, 1829; State v. Brewster, 7 Vt. 118, 1835. *Contra:* State v. Simmons, 39 Kan. 262, 1888; *In re* Robinson, 29 Neb. 135, 1890; and that when once he is within the jurisdiction he can be tried for any offense other than the one for which he was surrendered by a sister State. *In re* Noyes (U. S.), 17 Alb. L. J. 407, 1878; Lascelles v. Georgia, 148 U. S. 537, 36 Cent. L. J. 367, 1893, affirming 90 Ga. 347, 1892; Carr v. State, 104 Ala. 4, 1893; Williams v. Weber, 1 Colo. App. 191, 1891, 34 Cent. L. J. 71; People v. Sennett (Ill.), 20 Alb. L. J. 230, 1879; Hackney v. Welsh, 107 Ind. 253, 1886; Waterman v. State, 116 Ind. 51, 1888; State v. Kealy, 89 Iowa, 94, 1893; Com. v. Wright, 158 Mass. 149, 1893; State v. Patterson, 116 Mo. 505, 1893; State v. Walker, 119 Mo. 467, 1894; *In re* Petry (Neb.), 66 N. W. Rep. 308, 1896; People v. Cross, 135 N. Y. 536, 36 Cent. L. J. 91, 1892, affirming 64 Hun, 348, 1892; State v. Glover, 112 N. C. 896, 1893; *In re* Brophy, 2 Ohio N. P. 230, 1895; Com. v. Johnston, 12 Pa. C. C. 263, 1892; Ham v. State, 4 Tex. App. 645, 1878; Harland v. Territory, 3 Wash. Ty. 131, 1887; State v. Stewart, 60 Wis. 587, 1884. *Contra: In re* Hope, 40 Alb. L. J. 441, 1889; *In re* Baruch, 41 Fed. Rep. 472, 1890; *In re* Fitton, 45 Fed. Rep. 471, 1891; State v. Hall, 40 Kan. 338, 1888; *In re* Cannon, 47 Mich. 481, 1882; though not when surrendered by a foreign country, even for a less offense included in the greater: U. S. v. Watts, 14 Fed. Rep. 130, 1882; *Ex parte* Hibbs, 26 Fed. Rep. 421, 1886; U. S. v. Rauscher, 119 U. S. 407, 1886; *Ex parte* Koy, 32 Fed. Rep. 911, 1887; Com. v. Hawes, 13 Bush (Ky.), 697, 1878; State v. Vanderpool, 39 Ohio St. 273, 1883; Blandford v. State, 10 Tex. App. 627, 1881. *Contra:* U. S. v. Caldwell, 8 Blatchf. (U. S.) 131, 1871; U. S. v. Lawrence, 13 Blatchf. (U. S.) 295, 1876; *In re* Miller (U. S.), 6 Crim. L. Mag. 511, 1885; *In re* Reinitz, 39 Fed. Rep. 204, 1889; People v. Harman, 9 Misc. Rep. (N. Y.) 600, 1894; People v. Stout, 81 Hun (N. Y.), 336, 1894. See 28 Am. L. Rev. 568; 32 Am. L. Reg. (N. S.) 557.

The courts of Nebraska and Ohio have yielded on the former points to the decision of the Supreme Court of the United States, and surrendered their former opinions (*In re*

Petry [Neb.], 66 N. W. Rep. 308, 1896, overruling *In re* Robinson, 29 Neb. 135, 1890; *In re* Brophy, 2 Ohio N. P. 230, 1895, overruling *Ex parte* McKnight, 48 Ohio St. 588, 34 Cent. L. J. 71, 1891); but the courts of Kansas apparently cling to their old views. See State v. Meade, 56 Kan. 690, 1896.

In accord with the doctrines above enumerated, it has been held that a prisoner cannot set up as a ground for discharge that he has been enticed into the State by fraudulent representations (*In re* Brown, 4 N. Y. Crim. Rep. 576, 1886); nor that the extradition proceedings in the other State were irregular. Hall v. Patterson, 45 Fed. Rep. 352, 1891; *In re* Miles, 52 Vt. 609, 1880. See on this general subject article on "Interstate Extradition," 35 Cent. L. J. 301.

CARRIERS OF PASSENGERS—STEAMBOATS—LIABILITY AS INNKEEPERS.—The Court of Appeals of New York decide, in Adams v. New Jersey Steamboat Co., that where money for traveling expense carried by a passenger on a steamboat, is stolen from his stateroom at night, without negligence on his part, the carrier is liable therefor, without proof of negligence, his liability being analogous to that of an innkeeper. The court says:

The defendant has, therefore, been held liable as an insurer against the loss which one of its passengers sustained under the circumstances stated. The principle upon which innkeepers are charged by the common law as insurers of the money or personal effects of their guests originated in public policy. It was deemed to be a sound and necessary rule that this class of persons should be subjected to a high degree of responsibility in cases where an extraordinary confidence is necessarily reposed in them, and where great temptation to fraud and danger of plunder exists by reason of the peculiar relations of the parties. Story, Bailm. § 464; 2 Kent, Comm. 592; Hulett v. Swift, 33 N. Y. 571. The relations that exist between a steamboat company and its passengers, who have procured staterooms for their comfort during the journey, differ in no essential respect from those that exist between the innkeeper and his guests. The passenger procures and pays for his room for the same reasons that a guest at an inn does. There are the same opportunities for fraud and plunder on the part of the carrier that was originally supposed to furnish a temptation to the landlord to violate his duty to the guest. A steamer carrying passengers upon the water, and furnishing them with rooms and entertainment, is, for all practical purposes, a floating inn, and hence the duties which the proprietors owe to the passengers in their charge ought to be the same. No good reason is apparent for relaxing the rigid rule of the common law which applies as between innkeeper and guest, since the same considerations of public policy apply to both relations. The defendant, as a common carrier, would have been liable for the personal baggage of the plaintiff, unless the loss was caused by the act of God or the public enemies; and a reasonable sum of money for the payment of his expense, if carried by the passenger in his trunk, would be included in the liability for loss of baggage. Merrill v. Grinnell, 30 N. Y. 594; Merritt v. Grinnell, 30 N. Y. 694; Merrit v. Earle, 29 N. Y. 115; Elliott v. Rossell, 10 Johns. 7; Brown. Carr., § 41; Redf. Carr., § 24; Ang. Carr., § 80. Since all questions of negligence on the part of the plaintiff, as well as those growing out of the claim that some notice was posted in the room regarding the carrier's liability for the money, have been disposed of by the verdict, it is difficult to give any good reason why the measure of liability should be less for the loss of the money, under the circumstances, than for the loss of what might be strictly called baggage. The question involved in this case was very fully and ably discussed in the case of Crozier v. Steamboat Co., 43 How. Prac. 466, and in Macklin v. Steamboat Co., 7 Abb. Prac. (N. S.) 229. The liability of the carrier in such cases as an insurer seems to have been very clearly demonstrated in the opinion of the court in both actions, upon reason, public policy, and judicial authority. It appears from a copy of the *remittitur* attached to the brief of plaintiff's counsel that the judgment in the latter case was affirmed in this court, though it seems that the case was not reported.

It was held in Carpenter v. Railroad Co., 124 N. Y. 53, 26 N. E. Rep. 277, that a railroad running sleeping coaches on its road was not liable for the loss of money taken from a passenger while in his berth, during the night, without some proof of negligence on its part. That case does not, we think, control the question now under consideration. Sleeping-car companies are neither innkeepers nor carriers. A berth in a sleeping car is a convenience of modern origin, and the rules of the common law in regard to carriers or innkeepers have not been extended to this new relation. This class of conveyances are attached to the regular trains upon railroads for the purpose of furnishing extra accommodations, not to the public at large, nor to all the passengers, but to that limited number who wish to pay for them. The contract for transportation, and liability for loss of baggage, is with the railroad, the real carrier. All the relations of passenger and carrier are established by the contract implied in the purchase of the regular railroad ticket, and the sleeping car is but an adjunct to it only for such of the passengers as wish to pay an additional charge for the comfort and luxury of a special apartment in a special car. The relations of the carrier to a passenger occupying one of these berths are quite different, with respect to his personal effects, from those which exist at common law between the innkeeper and his guest, or a steamboat company that has taken entire charge of the traveler by assigning to him a stateroom. While the company running sleeping cars is held to a high degree of care in such cases, it is not liable for a loss of this character, without some proof of negligence. The liability as insurers which the common law imposed upon carriers and innkeepers has not been extended to these modern appliances for personal comfort, for reasons that are stated quite fully in the adjudged cases, and that do not apply in the case at bar. Ulrich v. Railroad Co., 108 N. Y. 80, 15 N. E. Rep. 60; Car Co. v. Smith, 73 Ill. 360; Woodruff Co. v. Diehl, 84 Ind. 474; Lewis v. Car Co., 143 Mass. 267, 9 N. E. Rep. 615.

But, aside from authority, it is quite obvious that the passenger has no right to expect, and in fact does

not expect, the same degree of security from thieves while in an open berth in a car on a railroad as in a stateroom of a steamboat, securely locked, and otherwise guarded from intrusion. In the latter case, when he retires for the night he ought to be able to rely upon the company for his protection with the same faith that the guest can rely upon the protection of the inkeeper, since the two relations are quite analogous. In the former the contract and the relations of the parties differ at least to such an extent as to justify some modification of the common-law rule of responsibility. The use of sleeping cars by passengers in modern times created relations between the parties to the contract that were unknown to the common law, and to which the rule of absolute responsibility could not be applied without great injustice in many cases. But in the case at bar no good reason is perceived for relaxing the ancient rule, and none can be deduced from the authorities. The relations that exist between the carrier and the passenger who secures a berth in a sleeping car or in a drawing-room car upon a railroad are exceptional and peculiar. The contract which gives the passenger the right to occupy a berth or a seat does not alone secure to him, the right of transportation. It simply gives him the right to enjoy special accommodations at a specified place on the train. The carrier by railroad does not undertake to insure the personal effects of the passenger which are carried upon his person against depredation by thieves. It is bound, no doubt, to use due care to protect the passenger in this respect; and it might well be held to a higher degree of care when it assigns sleeping berths to passengers for an extra compensation than in cases where they remain in the ordinary coaches, in a condition to protect themselves. But it is only upon the ground of negligence that the railroad company, can be held liable to the passenger for money stolen from his person during the journey. The ground of the responsibility is the same as to all the passengers, whether they use sleeping berths or not, though the degree of care required may be different. Some proof must be given that the carrier failed to perform the duty of protection to the passenger that is implied in the contract, before the question of responsibility can arise, whether the passenger be in one of the sleeping berths, or in a seat in the ordinary car. The principle upon which the responsibility rests is the same in either case, though the degree of care to which the carrier is held may be different. That must be measured by the danger to which the passenger is exposed from thieves, and with reference to all the circumstances of the case. The carrier of passengers by railroad, whether the passenger be assigned to the ordinary coaches or to a berth in a special car, has never been held to that high degree of responsibility that governs the relations of innkeeper and guest; and it would perhaps be unjust to so extend the liability, when the nature and character of the duties which it assumes are considered. But the traveler who pays for his passage, and engages a room, in one of the modern floating palaces that cross the sea or navigate the interior waters of the country, establishes legal relations with the carrier that cannot well be distinguished from those that exist between the hotel keeper and his guests. The carrier in that case undertakes to provide for all his wants, including a private room for his exclusive use, which is to be as free from all intrusion as that assigned to the guest at an hotel. The two relations, if not identical, bear such close analogy to each other that the same rule of responsibility should govern. We are of the opinion, therefore, that the defendant was properly held liable in this case for the money stolen from the plaintiff, without any proof of negligence.

RECENT PHASES OF CONTRACT LAW —I. THE RIGHT OF A THIRD PARTY TO SUE FOR A BREACH OF CONTRACT.*

The obligation and duty arising out of a contract are due only to those with whom it is made; and, therefore, if a wrong or injury results from the breach of a contract an action for redress can, as a rule, be brought only by one who was a party to the contract.[1] The reason for the rule that privity of contract is necessary to an action founded on a breach of contract is, that otherwise a man's responsibility for not carrying out his agreement with another would have no limit; there would be no bounds to actions if the ill effect of the failure of a man to perform his agreement could be followed down the chain of results to the final effect.[2] A for example contracts with B to build him (B) a wagon. He builds it so badly that when it is used by C, to whom B has loaned it, it breaks down, injuring C. C cannot recover damages against A, because A's obligation to build a safe wagon arose solely out of his contract with B.[3] Numerous other illus-

* In this series of articles which will be continued from time to time during the year, particular attention will be called to the current decisions of the courts confirming, extending, modifying or overthrowing, as the case may be, certain principles of the law of contracts, as stated in the elementary text books.

[1] Davidson v. Nichols, 11 Allen, 517; Roddy v. R. Co., 104 Mo. 234. "A vendor of goods assumes no responsibility and incurs no liability beyond that which results from his contract with his vendee. With remote vendees of the article who purchase it by subsales from those to whom it was originally sold, he enters into no contract, either express or implied, and takes on himself no obligation or duty whatever." Davidson v. Nichols, *supra*.

[2] Ware v. Brown, 2 Bond, 267. Another reason is a New Jersey case (Kahl v. Love, 37 N. J. L. 5). "The object of parties in inserting in their contracts specific, undertakings, with respect to the work to be done, is to create an obligation *inter esse*. These engagements and undertakings must necessarily be subject to modifications and waiver by the contracting parties. If third persons can acquire a right in a contract, in the nature of a duty to have it performed as contracted for, the parties will be deprived of control over their own contracts."

[3] Thomas v. Winchester, 6 N. Y. 377; Davidson v. Nichols, 11 Allen, 517; Winterbottom v. Wright, 10 M. & W. 100.

trations of this principle might be given. A, a blacksmith, negligently shoes B's horse. C hires the horse from B and is injured while riding, it through the defective shoeing.[4] A, an attorney, is employed by B, who is about to purchase a piece of real estate, to examine the title. B, without using the care and skill which he is bound to use, reports that the title is good; C relying on his report purchases the land, but the title turns out not to be good and C is damaged.[5] A, a water company, contracts with B, a city, to keep at all times a sufficient supply of water for the use of the city for the extinguishment of fires. It fails to keep its contract whereby the house of C is burned, there being no supply of water.[6] In none of these cases has C any right of action as he was not a party to the broken contract. In *Buckly v. Gray*,[7] the Supreme Court of California decides that an attorney employed to draw a will is not liable to a person who, through the attorney's negligence and ignorance in the discharge of his professional duties, was deprived of the portion of the estate which the testator instructed the attorney should be given such person by the will. And in *Washburn v. Investment Co.*,[8] where the defendant promised to pay within thirty days a corporation's creditors, including plaintiff, and to make advances to enable it to continue business, in consideration whereof the corporation agreed to issue to defendant one share of its stock, of the par value of $50 for each $50 of indebtedness paid and advances made, it was held by the Supreme Court of Oregon that plaintiff, on defendant's failure to perform, cannot maintain an action against him for his claim against the corporation. Said the court: "The prevailing doctrine in this country undoubtedly is that, where one person, as a consideration or part consideration for an executed contract, promises another, for a consideration moving from him, to pay or discharge some legal obligation or debt due from such other to a third person, the latter, although a stranger to the consideration, and not an immediate party to the contract, may maintain an action thereon, if it was made directly and primarily for his benefit. And this, we think, is all that has in fact been held by the former decisions of this court in which such actions have been sustained, although the language of some of the decisions states the rule without qualification that, where one person makes a promise to another for the benefit of a third, the latter may maintain an action thereon.[9] But, after a somewhat exhaustive examination of the question, we have found no case which has gone so far as to hold that such action can be maintained on an executory contract by which one person promises to advance his own money to pay the debts of another, but, on the contrary, the authorities deny the application of the rule to such a contract."[10] Numerous examples of this principle are found in those cases where a person contracting to do work for another does it so badly that injury results to a third person. In a well known English case,[11] the plaintiff proved that a mail coach had been defectively constructed; that it was constructed under a contract with the postmaster general; and that, because of its defective construction, plaintiff sustained an injury. The court denied a recovery upon the ground that the coach maker owed plaintiff no duty. Lord Abinger, in the course of his opinion, said: "Unless we confine the operation of such contracts as this to the parties who entered into it, the most absurd and outrageous consequences, to which I can see no limit, would ensue." So a declaration was held bad which alleged that the defendant negligently hung a chandelier in a public house knowing that it would be likely to fall on plaintiff and others in the house unless properly hung, and that it fell upon and injured the plaintiff.[12] In a Michigan case,[13] the defendant manufactured and put

[4] Thomas v. Winchester, *supra*.

[5] Nat. Bk. v. Ward, 100 U. S. 195; Dundee Co. v. Hughes, 18 Cent. L. J. 470; Houseman v. Girard Assn., 81 Pa. St. 256.

[6] Lawson, Cont. § 113, and cases cited; Ferris v. Carson Water Co., 16 Nev. 44, 40 Am. Rep. 405; Fowler v. Athens Water Co., 83 Ga. 219, 20 Am. St. Rep. 313; Becker v. Keokuk Water Co., 79 Iowa, 418, 18 Am. St. Rep. 377; Phoenix Ins. Co. v. Water Co., 42 Mo. App. 118.

[7] 42 Pac. Rep. 900 (1895).

[8] 38 Pac. Rep. 620.

[9] Baker v. Eglin, 11 Or. 333, 8 Pac. Rep. 280; Hughes v. Navigation Co., 11 Or. 437, 5 Pac. Rep. 206; Schneider v. White, 12 Or. 503, 8 Pac. Rep 652; Chrisman v. Insurance Co, 16 Or. 283, 18 Pac. Rep. 466.

[10] Garnsey v. Rogers, 47 N. Y. 233; Second Nat. Bank of St. Louis v. Grand Lodge, 98 U. S. 123; Pardee v. Treat, 82 N. Y. 385; Berry v. Brown (N. Y.), 14 N. E. Rep. 289.

[11] Winterbottom v. Wright, 10 M. & W. 109.

[12] Collins v. Selden, L. R. 3 C. P. 495; Heaven v. Pender, 11 Q. B. Div. 503.

[13] Necker v. Harvey, 49 Mich. 517.

up in the factory of a soap company an elevator under a contract with the soap company that it would lift at least two thousand pounds. The elevator fell, by reason of a defective shaft, in three days after it had been put in place, and injured a workman in the employ of the soap company. Judge Cooley, speaking for the court said: "The statements of facts so far makes out no cause of action in favor of the plaintiff. It discloses a duty on the part of the defendant to construct an elevator which should lift two thousand pounds, but the duty was to the soap company and not to anybody else. Nothing is better settled than an action will not lie in favor of any third party upon a breach of this duty. In New York it is held that the manufacturer and vendor of a steam boiler is liable only to the vendee for defective materials and want of care in its construction, and the vendor was not liable to a third person for damages caused by an explosion on account of defective materials and construction.[14] In Pennsylvania a contractor erected a hotel building and turned the same over to the hotel company. Thereafter an entertainment was given at the hotel by the proprietor. A crowd of persons collected on a porch, when a girder gave way, and one of the persons attending the entertainment was injured, and he brought suit against the contractor. The contractor, it was held, was not liable to the plaintiff, because he owed the plaintiff no duty whatever, the court saying: "The consequences of holding the opposite doctrine would be far reaching. If a contractor who erects a house, who builds a bridge or performs any other work, the manufacturer who constructs a boiler, piece of machinery or a steamship, owes a duty to the whole world that his work or his machine or his steamship shall contain no hidden defect, it is difficult to measure the extent of his responsibility, and no prudent man would engage in such occupations upon such conditions. It is safer and wiser to confine such liabilities to the parties immediately concerned."[15]

Two recent cases in Indiana and Missouri illustrate this principle. In *Daugherty v. Herzog*,[16] a contractor who had been employed by the owner to remodel a building had completed his work and turned it over when the front wall fell and killed a passerby. Though the work had been negligently done, it was held that the contractor was not liable to the representatives of the person killed. In *Heizer v. Kingsland Co.*,[17] it was held that a manufacturer is not liable for the explosion of the cylinder of a steam threshing machine, whereby an employee of the purchaser is killed, where the proof shows want of care in testing the machine, but does not show that the manufacturer knew that the cylinder was defective or unfit for use, Black, J., saying: "Is the defendant liable to the plaintiff (the wife of the employee) for simple negligence? If there is any such liability it is because of a breach of duty owing by the defendant to the plaintiff's husband. If the defendant owed the deceased any duty whatever that duty was created (1) either by the contract by which defendant sold the machine to Ellis, or (2) was a duty imposed by law upon defendant in addition to or independent of any mere contract duty. There is no doubt but that a cause of action in tort often arises from the breach of a duty created by contract, but in such cases there must be some privity of contract between the defendant and the person injured. There being no privity of contract the suit cannot be maintained.[18] If this rule of law applies to the case in hand, then it is clear the plaintiff cannot recover for negligence in making and selling the machine, for Heizer was in no way a party to the contract by which defendant sold the machine to Ellis. There is no privity of contract between defendant and the deceased."

To this general principle there are two exceptions or qualifications to be noticed:

I. *Where the Contract is Made for the Special Benefit of the Third Person.*—It is generally laid down in the courts of this country that where a person makes a promise to another for the special benefit of a third person, the latter may maintain an action

[14] Losee v. Clute, 51 N. Y. 494.
[15] Curtin v. Somerset, 140 Pa. St. 70.
[16] 44 N. E. Rep. 457 (1896).
[17] 110 Mo. 605.
[18] Roddy v. Railroad Co., 104 Mo. 234; Winterbottom v. Wright, 10 Mees. & W. 109; Loop v. Litchfield, 42 N. Y. 351; Losee v. v. Clute, 51 *Id.* 494; Necker v. Harvey, 49 Mich. 517; Bank v. Ward, 100 U. S. 195; Safe Co. v. Ward, 46 N. J. Law, 19; Curtin v. Somerset (Pa.), 21 Atl. Rep. 244; Gordon v. Livingston, 12 Mo. App. 267; Kahl v. Love, 37 N. J. Law, 8; Whart. Neg. (2d ed.) § 438.

upon it.[19] But in *Crandall v. Payne*,[20] it is held by the Supreme Court of Illinois that where a contract for the sale of land simply recites that part of the price "is going to" one not a party to the contract he cannot sue for its breach. While the Illinois court has frequently ruled in accordance with the general principle stated above,[21] "it would be going too far to hold that a mere stranger to the contract who was to derive only an incidental benefit therefrom, might recover for a breach of such contract." And in *Buckley v. Gray*[22] the court distinguishes the case from those in which the contract is for the special benefit of the third party, who as the real party in interest is then allowed to sue, saying, "The contract between the plaintiff's mother and the defendant, which was the subject of the breach, cannot be said in any legal sense to have been expressly made for plaintiff's benefit. It was a contract for employment of defendant's services as an attorney, to draft the will of Mrs. Buckley, the immediate purpose of which was for the benefit of the latter, to enable her to make disposition of her estate in accordance with her desire. Remotely, it is true, she intended plaintiff to be benefited as a result of such contract, by providing for him in her will. Such provision, however, could create no vested right in plaintiff until the death of the testatrix. Until that event the will remained purely ambulatory, and the provision for plaintiff could be at any time changed or withdrawn. It, therefore, created a mere possibility in plaintiff; not a right which made him in law a privy to the contract. To hold that, by reason of the provision for plaintiff in the will, the contract is to be considered one made expressly for his benefit, is to confound the terms of the will with those of the contract. The latter alone was the subject of the breach, and by defendant's negligence in carrying out that contract the testatrix alone suffered legal injury. Although the ultimate consequential injury to plaintiff would appear to have been great, it was, so far as defendant is concerned, *damnum absque injuria*, against which the courts are powerless to relieve." And in *Washburn v. Investment Co.*,[23] the Supreme Court of Oregon say: "Where one person receives a fund or property from another, and instead of paying him therefor is allowed to retain the consideration under an agreement to pay it to the creditors of the other party; or when it is agreed between the parties to the contract, there being a valuable consideration therefor, that the promisor may discharge his debt or liability to the promisee by paying it to some third person, to whom the promisee owes some legal duty or obligation—it would be just and proper that such third party should have the right to maintain an action on the contract in his own name. But this is on the theory that the contract being for his direct benefit, the law invests him with a privity in respect thereto by reason of his interest, and the promisor, in performing the contract, is doing nothing more than to discharge his own debt or obligation in accordance with his agreement. In such case, the amount which the promisor agrees to pay is his own debt or obligation, which, by an arrangement with the promisee, he is to pay or discharge in a particular manner; and, the parties having by their contract thus treated the third party as primarily interested in its performance, they have recognized him as privy in fact to the consideration and contract, and therefore there can be no hardship in allowing him to enforce it by action in his own name, as the parties to the contract contemplated. But where there is no such fund, debt, or obligation in the hands of or owing from the promisor, but only an executory contract by one person to advance his own money to pay the debts of another, who is neither a party to the contract or consideration, it is difficult to see upon what principle the doctrine can be applied. In such case the contract is not made for the direct benefit of the creditor, but of the promisor, to enable him to obtain money with which to discharge his liability, and, if enforceable at all, it is enforceable by him. The creditors are, of course, indirectly interested in its performance, for, if the contract is complied with, their claims will be paid; and this may

[19] Lawson on Contr. § 113, and cases cited; Ellis v. Harrison, 104 Mo. 270; Mosman v. Bender, 80 Mo. 584; Wood v. Moriarity, 15 R. I. 518; Barrett v. Hughes, 53 Wis. 319; Benton v. Larkin, 36 Kas. 246, 57 Am. Rep. 541; Shaup v. Meyer, 24 Cent. L. J. 110; Lehow v. Simonton, 3 Colo. 346.

[20] 39 N. E. Rep. 601 (1895).

[21] See Eddy v. Roberts, 17 Ill. 205; Brown v. Strait, 19 Ill. 88; Bristow v. Lane, 21 Ill. 194.

[22] *Supra.*

[23] *Supra.*

be said of any executory contract whereby a debtor expects to receive money with which to pay his debts. But it has never been held, to our knowledge, that such an interest is sufficient to entitle a stranger to maintain an action to enforce the stipulations of the contract."

II. *Where a False Representation is Made.*—A false representation made by A to B upon which C acts and suffers loss does not always give C a right to sue A. This principle is usually illustrated in the text books by the English case[24] where directors were sued by persons who had purchased shares of stock in a corporation on the faith of false statements contained in a prospectus issued by the directors. The plaintiffs, however, had not originally subscribed, but had purchased their shares from the original subscribers. It was held that the prospectus was only addressed to the first applicants for shares; that the intention to deceive could not be supposed to extend to others than these, and that on the first subscription "the prospectus had done its work; it was exhausted." The doctrine is that there is no liability unless it appears that such false representation was made with the intent that it should be acted upon by such third person in the manner that occasions the injury or loss.[25] The English Gun Case[26] shows the limitation to the rule of non-liability. There the defendant sold a gun to the plaintiff's father, and on the sale made a false representation as to its make and safety. The gun exploded and injured the plaintiff, and it being proved that the defendant knew that the father was buying the gun to be used by his son, he was held liable for the injury. On the same principle it has been decided in the United States that a representation made by a business man to a commercial agency, in regard to his financial responsibility, will, if knowingly false, be a ground of action against him by third parties who have suffered loss by relying upon it.[27] In *Carter v. Harden*,[28] a Maine case, the defendant had sold a horse to the plaintiff's husband, representing to him that it was a safe and kind horse. While the husband was taking the plaintiff for a drive with the horse it became unmanageable, and ran away injuring the plaintiff. She brought action against the defendant on the false representation, but the court held that she could not recover because it was not shown that the defendant told any falsehood with the intent that she should act upon it. The court distinguishes the case at bar from the English Gun Case, on the ground that in the latter case the defendant knew that the gun was to be used by the sons and made the false representations, expecting the son as well as the father to rely upon them. "In the case at bar we do not find from the evidence that the defendant understood that the horse was being purchased for the wife or for her use, or that he expected the wife to rely upon any representations of his. The husband was in the business of peddling sewing machines, and the defendant understood the horse was wanted for use in that business."

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[24] Peck v. Gurney, L. R. 6 H. L. 377.

[25] Lawson on Contr. § 240, and cases cited; Hunnewell v. Duxbury, 154 Mass. 286; Bank v. Sowles, 46 Fed. Rep. 731; Merchants' Nat. Bk. v. Armstrong, 65 Fed. Rep. 93; Manhattan Brass Co. v. Reger, 32 Atl. Rep. 64 (Pa.)

[26] Langridge v. Levy, 2 M. & W. 579.

[27] Lawson on Contr. § 241; Gainesville Bk. v. Bamberger, 77 Tex. 48; Stevens v. Ludlum, 46 Minn. 160.

[28] 7 Atl. Rep. 392 (Me.).

CREDITORS' BILL WHEN LIES—UNASSIGNED RIGHT OF DOWER.

HARPER v. CLAYTON.

Court of Appeals of Maryland, December 3, 1896.

Where no express authority is given by statute, in the absence of fraud or other grounds for equitable relief, a creditors' bill will not lie to subject a widow's unassigned right to dower to the payment of her debts.

FOWLER, J.: The plaintiffs below are judgment creditors of the defendant, who is the widow of the late John S. Clayton, and as such widow she is entitled to dower in the real estate of her late husband. But it appears that her dower has never been actually assigned or set off to her, and it would, therefore, follow that she has not, at common law, any interest or estate in the lands of her husband until such assignment has been made. "Previous to the assignment of dower, her interest is a mere chose in action, nothing but a right by appropriate proceedings to compel the assignment to be made." Freem. Exns. § 185. So long, therefore, as the common law prevails, the unassigned dower right cannot be taken in execution at law. It is contended, however, and this contention appears to be the main ground upon which the plaintiffs ask the aid of a court of equity, that, the law affording them no relief, equity must necessarily do so. And al-

though an interesting question of equity jurisdiction is here presented which has been examined by some of the most learned jurists both of England and this country, it would be impossible in the court limits of this opinion to do more than refer to and discuss some of the leading cases. In the early cases of England the jurisdiction here contended for, to subject choses in action to the claims of creditors by a creditors' bill, was sustained, but generally upon the ground of fraud, trust, or for some other reason which it was conceded would entitle the creditor to invoke its aid. Thus, Taylor v. Jones, 2 Atk. 600, lays down the doctrine that where a debtor has, in fraud of his creditors, assigned to trustees certain choses in action in trust for himself for life, and then over to his wife and children, a court of equity will favorably hear the application of such creditors, and decree such trust estate to be sold for the payment of their debts. And this was held to be so notwithstanding such choses in action were not subject to levy and sale upon execution at law. Rex v. Marissal, 3 Atk. 192; Edgell v. Haywood, *Id.* 352; Horn v. Horn, Amb. 79; Patridge v. Gopp, *Id.* 596; Smithier v. Lewis, 1 Vern. 398. But even in cases like that of Taylor v. Jones, *supra*, and the others just cited, which would perhaps be now generally conceded to be within the limits of equity jurisdiction because of the allegation and proof of fraud, it was subsequently held in England that creditors could get no relief in equity, because they had no legal right which equity could enforce. Dundas v. Dutens, 1 Ves. Jr. 196; Grogan v. Cooke, 2 Ball & B. 230. In the case last cited Lord Manners quoted Lord Thurlow as having said: "The opinion in Horn v. Horn is so anomalous and unfounded that forty such opinions would not satisfy me. It would be preposterous and absurd to set aside an agreement which, if set aside, leaves the stock in the name of the person where you could not touch it." And in Bayard v. Hoffman, 4 Johns. Ch. 450, Chancellor Kent, after a most careful and elaborate examination of the English authorities, came to the conclusion that, while Lord Hardwicke had maintained the jurisdiction of equity thus to proceed against choses in action, it was afterwards denied and overthrown by both Lord Thurlow and Lord Eldon, although his own opinion, as expressed in Bayard v. Hoffman, *supra*, was that "the better reason is with the earlier authorities." But, notwithstanding this expression of opinion in the case just cited, the more recent cases upon this point in New York and some other States have vigorously announced and maintained the doctrine that, aside from statute, and in the absence of fraud or some element of trust, chancery has no jurisdiction to subject choses in action to the payment of creditors because there happens to be no remedy at law; and it would seem that the chancellor himself had adopted this view, as will appear by reference to his Commentaries (volume 4, p. 61), where he refers to the New York statute as authority for the statement that in that State a chose in action may be reached by process in chancery for the benefit of creditors. The cases relied upon by the plaintiffs do not, we think, sustain their position. The first of those in point of time is the case of Hamilton v. Mohun, 1 P. Wms. 122. But in that case there was no question of jurisdiction, as there is here, and it was very properly held, on a bill filed for an account by an heir at law against the widow as guardian, that a court of equity, in taking the account, should allow to the widow one-third of the profits for her right of dower; and this, too, whether dower had or had not been actually assigned. The question of jurisdiction was not involved in Hamilton v. Mohun, and it is therefore not an authority here. The plaintiffs also cited and relied upon three New York cases,—Tompkins v. Fonda, 4 Paige, 448; Stewart v. McMartin, 5 Barb. 438; and Payne v. Becker, 87 N. Y. 153. But it is sufficient to say, in regard to all of those cases, that they appear to be based upon the provisions of the New York statute which was in force when they were respectively decided. That statute, in effect and in words, provided that courts of chancery should have power to decree satisfaction of a judgment at law out of any money, property, or thing in action belonging to the defendant, whenever an execution against his property shall have been returned unsatisfied in whole or in part. The same observations may be made in regard to McMahon v. Gray, 150 Mass. 289, 22 N. E. Rep. 923, and Boltz v. Stoltz, 41 Ohio St. 540. In each of the States just named there were statutes expressly giving chancery courts jurisdiction to decree the sale of choses in action upon the application of judgment creditors. The case of Davison v. Whittlesey, 1 MacArthur, 163, was much relied on by the plaintiffs. It was decided on the authority of Tompkins v. Fonda, *supra*, which, having been based on the New York statute, should have had no weight where, as in the District of Columbia, no such statute was in force. Nor are we satisfied to adopt the reasoning of the court in Davison v. Whittlesey. After stating that at law the right to have dower assigned could not be reached, it is said: "But in equity it is otherwise. The widow has no right in conscience to deprive her creditors of the benefit of her right of dower for the satisfaction of their claims by continuing in joint possession with the heirs, and neglecting to ask for a formal assignment, which assignment, if made, would enable the creditors to reach her dower by execution." It must be remembered that in the case at bar there is not only no fraud alleged by the plaintiffs, but they have disclaimed any intention of charging bad faith or collusion between the defendant and the heirs at law who are in possession of the land in which she is entitled to have dower assigned to her. In the position she has assumed in this case she is only standing upon her legal rights. It is contended that at common law, aside from such statutes as have been evaded in some of the States, though not in Maryland, the defendant's right of dower is not liable for

her debts. And while it may be said, perhaps, in one sense, that "in conscience she ought not to deprive her creditors of the benefit of her right of dower" for the payment of their just claims, yet the same may be said of any one who relies on the statute of limitations or exemption laws to defeat such a claim. If debtors could be required by a court of equity to abandon their legal rights, and to subject themselves to the dictates of conscience, or to some law regarded as higher than the law of the land, they would doubtless seldom plead the statute of limitations, or rely upon the provisions of homestead or exemption laws. But whenever these statutes are properly and reasonably pleaded, they are as binding in a court of equity, which is sometimes called a "court of conscience," as they are in a court of law. And, recognizing this right to stand upon one's legal rights, it has been held that the neglect or refusal to have dower assigned does not amount to fraud. Maxon v. Gray, 14 R. I. 641; Buford v. Buford, 1 Bibb, 305. This is only another application of the well-settled principle of equity that "where a rule, either of statute or common law, is direct, and governs the case in all its circumstances or the particular point, a court of equity is as much bound by it as a court of law, and can as little depart from it." 1 Story, Eq. Jur. § 64. Applying here, then, the conceded common-law rule that the creditor has no legal right to look to the unassigned dower (it being a chose in action) for the satisfaction of his claims, it follows that equity will not aid him.

Much reliance was also placed upon the language used by Chancellor Bland in the case of Watkins v. Dorsett, 1 Bland, 531. To the same general effect, also, is Ager v. Murray, 105 U. S. 126, where it is said that it is within the general jurisdiction of a court of chancery to assist a judgment creditor to reach and apply to the payment of his debts any property which, by reason of its nature only, and not by reason of any positive rule exempting it from liability for debt, cannot be taken on execution at law; as in the case of trust property in which the judgment debtor has the entire beneficial interest, of shares in a corporation, or of choses in action. While the rule thus stated may be, when properly applied, admitted to be correct, we cannot agree with the application of it sought to be justified by Watkins v. Dorsett, nor with the broad application of the rule, as in Ager v. Murray, to all choses in action. In the case first named Chancellor Bland said that the facts before him expressed one of the then-existing deficiencies of our Code; and, after stating that both real and personal property of a debtor had been subjected to be taken on execution at law, he says: "There are, however, still several kinds of property which a debtor may hold, lying beyond the reach of his creditors," and he mentions as in this class stock in corporations and things in action. The case from which we have quoted the foregoing language of the chancellor was decided in 1829. But very soon thereafter the act of 1832 (chapter 307), now codified, was passed, by which any interest of a debtor in stock of a corporation may be taken and sold under an execution at law. But no such act has ever passed in this State by which the thing in action here attached could be so taken and sold. That there is no such statute is the main foundation of this proceeding in equity, for, if there were a remedy at law, the bill in this case was properly dismissed. It was held in Watkins v. Dorsett that, where a party cannot obtain relief at all, either by an ordinary execution or by the extraordinary remedy of outlawry or attachment of the person by reason of the peculiar situation of the property or the equitable nature of the bills, he may obtain relief by bill in equity. But we think it is apparent that this language, even if it was not so intended, should be limited so as to relate to enforcement of some existing legal right, for a court of equity, however broad and far-reaching its powers are, cannot create new rights, not before existing at law, and then take jurisdiction to pass upon and enforce them because the law affords no remedy. It is perhaps but fair to infer that the language of the chancellor related to property situated like that in Harris v. Alcock, 10 Gill & J. 226, to which case he refers, where it was held that the equitable interest of the defendant in personal property, which, under the circumstances of that case, could not be taken by execution at law, might be attacked in equity. Nor do we assent to this view that the mere abolition of the extraordinary remedies of outlawry and attachment of the person would confer jurisdiction or equity. Such a conclusion would be in conflict with reason, as well as with modern authority. It would certainly not seem to follow that, if the law had always and consistently refused to give an execution against things in action, and had allowed only the extraordinary remedies just mentioned, that upon the destruction of the latter the former would not only thereupon spring into existence, but become remedies appropriate for a court of equity. The contrary conclusion would, we think, be more reasonable, namely, that, the legislature having abolished execution against the person which was used for the purpose of getting satisfaction out of the debtor's effects which could not be reached by other executions, and having failed to provide any new remedy to take its place, it was not intended there should be any. And so it has been held in Donovan v. Finn, 1 Hopk. Ch. 59; Buford v. Buford, 1 Bibb, 305; Greene v. Keene, 14 R. I. 388, 397. "Equity follows the law," and, as we have seen, a rule either of statute or common law is as potent in a court of equity as in a court of law. 1 Story, Eq. Jur. § 64. Whatever may at one time have been the vague and general rule as to the limits and extent of equity jurisdiction, it is now well settled that "no court of chancery at this day would attempt to supply the defects of law by deciding contrary to its settled rules in any manner, to any extent, or under any circumstances, beyond the already settled princi-

ples of equity jurisprudence." 1 Pom. Eq. Jur. § 47. In reference to the New York cases cited in Ager v. Murray, *supra*, namely, McDermott v. Strong, 4 Johns. Ch. 687, and Spader v. Hadden, 5 Johns. Ch. 280, it may be said that they were both prior to Hadden v. Spader, 20 Johns. 554, in which Platt, J., said there was such a conflict of authority and *dicta* upon this question that he felt at liberty to decide it upon sound principles of justice and public policy, and that he was not prepared to extend the jurisdiction of equity to any other cases than those wherein the property itself was liable to execution at law, and which had been also assigned in fraud of creditors; holding also that the power to subject choses in action of the debtor had not been conferred upon the courts, and suggesting the necessity for legislation. It has been supposed that this expression of opinion led to the statute which was afterwards passed in New York conferring jurisdiction upon courts of chancery to entertain a bill like the one filed in this case.

It would seem to be reasonably clear from the authorities already cited and the discussion of them that, in the absence of a statute, and in the absence of fraud or some other ground of equity jurisdiction, a court of equity has no power to subject the defendant's unassigned right of dower to the payment of her debts. But this conclusion, will, we think, be placed beyond doubt by a brief consideration of some of the adjudications of the highest courts of other States. In the case of Maxon v. Gray, 14 R. I. 641, which was decided in 1885, the very question now before us was passed upon. That case, like this, was a bill in equity by judgment creditors for a decree for a sale of an unassigned right of dower, and in an able and elaborate opinion the court came to the conclusion, after reviewing many of the previous cases, that equity had no jurisdiction. To the same effect is Greene v. Keene, 14 R. I. 388. In Creswell v. Smith, 2 Tenn. Ch. 416, it was held that chancery has no power to reach stocks or things in action, even in the hands of third persons, unaffected with fraud or trust, without the aid of a statute. Keightley v. Walls, 27 Ind. 384; Williams v. Reynolds, 7 Ind. 622. In the case last cited it is said equity will not subject choses in action to the payment of a judgment creditor, because equity only aids the law, and will, therefore, not interfere, except as to such property as may be sold on execution at law. In the case of Buford v. Buford, *supra*, the same view was enforced in the absence of a statute, and in concluding its opinion the court said: "The bare circumstances of a debt cannot be made the foundation of a bill." The views upon the question of jurisdiction expressed in all these cases are in accord with the rule as laid down by Mr. Adams. "Equity," he says, "does not create new rights which the common law denies, but it gives effective redress for the infringement of existing rights, where, by reason of the special circumstances of the case, redress at law is inadequate." Adams, Eq., p. 6; Phelps, Jud. Eq., sec. 158. The plaintiffs having failed to bring the case within the limits of equity jurisdiction as established and practiced in this State, their bill must be dismissed. "When a creditor," says Chancellor Sanford, in Donovan v. Finn, *supra*, "comes into this court for relief, he must come not merely to obtain a decree or satisfaction of a judgment, but he must present facts which form a case for equity jurisdiction." Such facts the creditors who filed the bill now before us have entirely failed to set forth, and we therefore agree with the learned court below that the demurrer to the bill was properly sustained, and the bill was properly dismissed. Decree affirmed.

NOTE.—*General Principles Applicable to Creditors' Bills.*—Creditors' bills are bills in equity filed by creditors for the purpose of collecting their debts out of the real or personal property of the debtor under circumstances in which the process of execution at common law could not afford relief. 4 Amer. & Eng. Encyclopedia of Law, 573. The jurisdiction of a court of equity to reach the property of a debtor justly applicable to the payment of his debts, even where there is no specific lien on the property, is undoubted. It is a very ancient jurisdiction; but for its exercise the debt must be clear and undisputed, and there must exist some special circumstances requiring the interposition of the court to obtain possession of and apply the property. Unless the suit relate to the estate of a deceased person the debt must be established by some judicial proceeding and it must generally be shown that legal means for its collection have been exhausted. In this county there have been enacted in several States various statutory provisions intended to accomplish more speedily and effectively the object of the creditors' bill in the court of chancery. See 4 Amer. & Eng. Encylopedia of Law, p. 574. Such statutes are generally termed "Supplementary Proceedings," that is, proceedings by the creditor supplementary to the usual means of execution in compelling discovery by the defendant himself of his assets or by joining others in whose hands the defendant's assets are supposed to be. Statutes of this kind are in force in Arkansas, California, Colorado, Indiana, Iowa, Kentucky, Maine, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New York, Ohio, Oregon, South Carolina and Wisconsin. In other States the creditors' bill as a branch of the equitable jurisdiction is still the appropriate remedy. All property of the debtor which ought in equity to be applied to the payment of his debts may be reached by this process. It is not essential that the property should have been fraudulently withdrawn from the creditor's reach at law. Pendleton v. Perkins, 49 Mo. 565. Even a right of action for injury to debtor's property, it has been held, may be reached. Hudson v. Piets, 11 Paige (N. Y.), 180. But exempt property cannot be reached (Tillotson v. Wolcott, 48 N. Y. 188), nor the possibility of inheriting property (Smith v. Kearney, 2 Barb. Ch. 533), nor unearned salary. Browning v. Bettis, 8 Paige (N. Y.), 568.

Recent Decisions on the Subject.—Pub. St. Mass. ch. 151, sec. 2, cl. 11, which provides that proceedings in equity will lie to reach the property of a debtor which cannot be reached by an action at law, does not authorize a bill to subject money to the payment of defendant's note held by plaintiff, which has been deposited in court to await judgment, in another action to which defendant is not a party. Tuck v. Manning (Mass.), 22 N. E. Rep. 1001, 150 Mass. 211. The

right of a widow to have dower assigned to her out of the lands of her deceased husband may be reached by creditors in equity, under Pub. St. Mass. ch. 151, sec. 2, cl. 11, as amended by St. Mass. 1884, ch. 285, which authorizes bills by creditors to reach any property, right, title, or interest, legal or equitable, of a debtor within the State which cannot be taken on execution. McMahon v. Gray (Mass.), 22 N. E. Rep. 923, 150 Mass. 289. St. 1888, ch. 429, sec. 15, provides that "the money or other benefit, charity, relief, or aid to be paid, provided, or rendered by any corporation authorized to do business under this act shall not be liable to attachment by trustee or other process, and shall not be seized, taken, appropriated, or applied by any legal or equitable process, nor by operation of law, to pay any debt or liability of a certificate holder or any beneficiary named therein." Held, that a bill in equity, by a creditor of a certificate holder to reach the proceeds of the certifi ates, would not lie. Geer v. Horton (Mass.), 34 N. E. Rep. 269. Where a plaintiff was defrauded by A, who transferred the proceeds of the fraud to defendant, though plaintiff had at once a cause of action against defendant for money had and received, his allowing it to become barred does not deprive him of the right, having recovered a judgment against A, to proceed by creditors' bill against defendant as the fraudulent transferee of all A's property. Weaver v. Haviland, 37 N. E. Rep. 641, 142 N. Y. 534. A creditors' bill may be maintained to reach money of the debtor deposited in a bank in his wife's name. Gullickson v. Madsen (Wis.), 57 N. W. Rep. 965. Equity has jurisdiction of a suit in the nature of a judgment creditors' bill by persons claiming, by successive assignments from the original creditors, a lien on certain land, which the debtor had conveyed in fraud of the original creditors; and with this may be joined the additional reasons for relief that plaintiffs have long been in possession of the land, that the records of the case, through which the original purchaser at the execution sale claimed to have acquired legal title to the lands, have been lost, and that plaintiffs' title, though good in equity, may be technically insufficient at law. Wehrman v. Conklin, 15 S. C. Rep. 129, 155 U. S. 314. Where a deed absolute in terms is given as security, an action may be brought by a judgment creditor of the grantor to have the deed declared a mortgage, and to have the grantor's interest therein subjected to the payment of the judgment, though the debt for which the deed was given as security has not been fully paid. Dunton v. McCook (Iowa), 61 N. W. Rep. 977. As a basis for a creditors' bill in a State court, a judgment of the federal circuit court of the district of which the State is a part will be deemed a domestic judgment. First Nat. Bank v. Soloman, 60 N. W. Rep. 589, 42 Neb. 350. An action in the nature of a creditors' bill may be maintained under Civ. Code, sec. 481, to subject to payment of a judgment a county warrant payable to the debtor, in the hands of a county clerk, which cannot be reached by execution, or by ordinary proceedings in aid thereof. Clark v. Bert, 42 Pac. Rep. 733, 2 Kan. App. 407. The statutory proceedings in aid of execution did not supersede the action in the nature of a creditors' bill. Monroe v. Reid (Neb.), 64 N. W. Rep. 983, 46 Neb. 316. The mere right of dower may be reached by a bill in equity by the creditors of the dowress for the appointment of commissioners to assign her dower and homestead in land, and for the appointment of a receiver to take control of the dower interest when so assigned, and rent the same, and out of the rents pay complainants' debt, etc. Petefish v. Buck, 56 Ill. App. 149. A bill of equity may be maintained by a judgment creditor to obtain the appointment of a receiver, and the institution of proceedings whereby an unassigned right of dower may be changed into property, sold, and the proceeds applied in payment of the judgment. Thompson v. March, 61 Ill. App. 269.

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions, and except those Opinions in which no Important Legal Principles are Discussed of Interest to the Profession at Large.

1. ADMINISTRATION—Lien.—A judgment of the probate court is void which purports to create a lien upon the heirs' interests in a decedent's property, by directing a distribution of the estate to the heirs charged with a lien in favor of the administrator, on account of money expended by him for the benefit of the estate.—HUSTON V. BECKER, Wash., 47 Pac. Rep. 10.

2. ADMINISTRATION — Sale of Decedent's Land—Collateral Attack.—Where the petition by an administrator for the sale of decedent's land for payment of debts is sufficient to give the court jurisdiction, irregularities in the subsequent proceedings will not render the sale void, so as to be subject to collateral attack.—MOORE V. COTTINGHAM, Ala., 20 South. Rep. 994.

3. ADMINISTRATION—Suit by Widow of Decedent to Collect Assets.—A widow may maintain an action for the collection of a note owned by the estate of her deceased husband, which she has the right to claim as exempt, before the grant of administration on the estate, or the setting apart of the exempt property.—HOWLE V. EDWARDS, Ala., 20 South. Rep. 956.

4. ADVERSE POSSESSION — Agency.—Where one has entered into possession of property as agent for the owner, and after such owner's death is appointed guardian of his children, and continues to hold the property, his possession is that of his wards, and is adverse to any others claiming to be children and heirs of the decedent; and the owner's death and the appointment as guardian are sufficient notice to such claimants that the agency has terminated, and his holding is adverse to them.—WESTENFELDER V. GREEN, U. S. C. C., D. (Oreg.), 76 Fed. Rep. 925.

5. ADVERSE POSSESSION — Contract for Purchase.—Where a wife conveys her separate property in consideration of an assignment to her husband of a contract for the purchase of land, with full knowledge of the nature of the contract, and that the transfer is to him, their possession under the contract does not enable the wife to claim adversely to the landowner.—LARAWAY V. ZENOR, Iowa, 69 N. W. Rep. 416.

6. ADVERSE POSSESSION—Evidence.—Every presumption is in favor of a possession in subordination to the title of the true owner, and an adverse possession as against such owner must be taken strictly, and established by clear and positive proof. The possession necessary to confer title by an adverse holding must be actual, continuous, and adverse to the legal title for the full statutory period.—BARRS V. BRACE, Fla., 20 South. Rep. 991.

7. ADVERSE POSSESSION — Ouster — Presumption of Deed.—Statements in the certificate to a deed to the effect that the wife, who joins with her husband in its execution, releases her rights of dower and of inheritance as widow of a former husband in the land conveyed, cannot limit the express words of the deed purporting to convey the entire title in fee to the land described, and possession taken by the grantee under such deed constitutes ouster as to all other persons claiming interests in the land.—GARRETT V. WEINBERG, S. Car., 26 S. E. Rep. 3.

8. ALTERATION OF NOTE.—Changing the time when interest should run on a promissory note, by making it read "from date," instead of "from maturity," is a material alteration thereof, of the same character as if it changed the principal; and the instrument is avoided when the alteration is made without the consent of the makers. And such alteration vitiates it, regardless of the intention of the party making such change.—SHEELEY V. SIMPSON, Kan., 46 Pac. Rep. 994.

9. ALTERATION OF NOTE.—The addition of the name of a surety to a promissory note after its delivery to the payee, without the maker's knowledge, is not such an alteration as will release such maker.—ROYSE V. STATE NAT. BANK OF ST. JOSEPH, Neb., 69 N. W. Rep. 301.

10. APPEAL — Effect of Reversal — Mandate.—Decree for defendant having been entered on the hearing of a bill for injunction, and affirmed by the appellate court, the complainants appealed to the supreme court. The decree was by this court reversed, and the cause remanded "to the circuit court, for further proceedings not inconsistent with" the opinion of the supreme court: Held, that an order denying a motion of the defendant for leave to file a supplemental answer, and entering final decree for complainants, was properly granted.—CITY OF CHICAGO V. GREGSTEN, Ill., 45 N. E. Rep. 505.

11. APPEAL—Notice.—Where a part of the defendants give notice of appeal, but do not serve it on the other defendants, and the other defendants then give notice of appeal, and serve it on all necessary parties, those attempting the first appeal may abandon it, and join in the second.—WATTERSON V. MASTERSON, Wash., 46 Pac. Rep. 1041.

12. APPEAL FROM JUSTICE COURT — Notice.—Code, § 877, providing that, where the adverse party is present when appeal is prayed from a judgment in justice court, written notice of appeal need not be given the justice or adverse party, implies that, where the adverse party is not present, statutory notice must be given and served.—MARION V. TILLEY, N. Car., 26 S. E. Rep. 26.

13. ASSIGNMENT—Choses in Action.—An assignment of "all right, title and interest in and to all property, real and personal, legal and equitable, which I now own or claim to own or in which I have any interest" is sufficient to transfer the assignor's interest in his own behalf and as attorney in the shares of a corporation for the recovery of which an action was pending, at the suit of the assignor.—ELLIS V. SOUTHWESTERN LAND CO., Wis., 69 N. W. Rep. 363.

14. ASSIGNMENT FOR BENEFIT OF CREDITORS.—A banking partnership, being insolvent, executed a number of deeds and mortgages to secure certain creditors, and a trust deed to plaintiff to secure depositors who were named therein as beneficiaries, plaintiff being a depositor for a nominal amount. A corporation of which the partners were controlling members, and to which the firm was largely indebted, also executed a general assignment. The trust deed, at the time of its execution, included practically all the property owned by the firm: Held, that the conveyances must be regarded as one transaction, constituting a general assignment, and therefore void, under Code, § 2115, declaring that no general assignment shall be valid unless made for the benefit of all the creditors.—ELWELL V. KIMBALL, Iowa, 69 N. W. Rep. 286.

15. ASSIGNMENT FOR BENEFIT OF CREDITORS.—An order made in proceedings on a general assignment for the benefit of creditors, granting leave to a creditor who has not filed his claim for allowance to bring a separate action against the assignee for the foreclosure of a mortgage securing it, on a portion of the assigned property, is within the discretion of the court.—PENN MUT. LIFE INS. CO. V. FIFE, Wash., 47 Pac. Rep. 27.

16. ASSIGNMENT FOR BENEFIT OF CREDITORS.—The right of an assignee for the benefit of creditors to merchandise covered by the assignment is superior to that of a judgment creditor of the assignor who caused an execution to be delivered to the sheriff between the time when the executed deed of assignment and the key to the store, which was locked, were delivered to the assignee, and his taking actual possession, which followed within an hour thereafter; he being in possession when the sheriff arrived to levy the execution.—FELTENSTEIN V. STEIN, Ill., 45 N. E. Rep. 502.

17. ASSIGNMENT FOR BENEFIT OF CREDITORS.—Under Code § 2115, declaring a general assignment by an insolvent for benefit of creditors invalid if not made for all creditors equally, a mortgage constituting a part of and rendering a general assignment invalid because it creates a preference, is itself void as against creditors of the insolvent.—CREGLOW V. CREGLOW, Iowa, 69 N. W. Rep. 446.

18. ASSIGNMENT FOR BENEFIT OF CREDITORS—Assent of Creditors.—Where an assignment for the benefit of creditors is, on its face, valid and beneficial to creditors, the assent and acceptance of the creditors will be presumed.—ROBINSON, BOYLSTON & MCKELDIN CO. V. THOMASON, Ala., 20 South. Rep. 951.

19. ASSIGNMENT FOR BENEFIT OF CREDITORS — Delivery.—Where an assignment for the benefit of creditors, after being executed, was handed to the assignee, who indorsed his acceptance thereon, and immediately returned it to the assignor, to be filed by him for record, there was no such delivery of the instrument as would make it effective as against a chattel mortgage filed for record subsequent to the acceptance by the assignor, but prior to the recording of the assignment.—DAY V. SINES, Wash., 46 Pac. Rep. 1048.

20. ASSUMPSIT—Purchase Price.—Where a vendor of land agrees to accept from the vendee, in payment therefor, shares of stock owned by the vendee, at the price paid for it by him, and the vendee, by representing the price paid to be greater than it actually was, induces the vendor to accept the shares of stock at that valuation, the vendor, on discovering the fraud, may treat the difference between the price actually paid by the vendee for the stock and that at which he accepted it from him as the balance due on the purchase, and maintain *assumpsit* therefor.—HIDEY V. SWAN, Mich., 69 N W. Rep. 225.

21. ATTACHMENT—Fixtures.—The statutory provision for the trial of the right to personal property seized under execution or attachment, on filing claim bond and affidavit, does not apply where the property claimed is fixtures.—JONES V. BULL, Tex., 37 S. W. Rep. 1054.

22. ATTACHMENT — Levy on Property in Hands of Sheriff.—Even though a sheriff, in possession of per-

sonal property for its safe-keeping pending an application for a receiver, is to be deemed to be a receiver, a proposition not determined, the levy of an attachment on a portion of such property without leave of the court is not void, in the absence of any objection by the sheriff, as custodian, or by the receiver, on that ground.—ACKERMAN v. ACKERMAN, Neb., 69 N. W. Rep. 388.

23. ATTORNEY AND CLIENT—Lien.—Where an attorney has a lien for fees on a judgment against an officer, and brings an action on the debtor's official bond in the name of the judgment creditors, plaintiffs cannot discontinue the action, to the injury of the attorney, without his consent.—HEAVENRICH v. ALPENA CIRCUIT JUDGE, Mich., 69 N. W. Rep. 226.

24. BAILMENT—Lien.—A lien does not exist, at common law or by custom, in favor of one who holds property in subordination to the will or control of another. —MOLINE, MILBURN & STODDARD CO. v. WALSER A. WOOD MOWING & REAPING MACH. CO., Neb., 69 N. W. Rep. 405.

25. BAILMENT — Stock—Conversion. — Stock was deposited with a gratuitous bailee, on condition that it should be delivered to the purchaser on payment of notes deposited with the stock. The purchaser resold a portion of the stock, for which the second purchaser paid in part, the bailee agreeing to deliver it to him when the balance was paid. Eight months afterwards, the original purchaser gave an order directing the bailee to deliver to H "all" stock deposited in his name which order was accepted by the bailee, who had forgotten the sale to the second purchaser. Before the stock was delivered to H, the second purchaser tendered the balance due: Held, that the bailee was not authorized to deliver the stock to H.—KAHALEY v. HALEY, Wash., 47 Pac. Rep. 23.

26. BANKS—Imputable Knowledge of Officers.—If an officer of a bank, who is also a member of its discount committee, take part in discounting a note made to him individually for an unlawful purpose in which he participated, his knowledge of such illegality is not imputable to the bank.—GRAHAM v. ORANGE COUNTY NAT. BANK, N. J., 35 Atl. Rep. 1053.

27. BENEVOLENT SOCIETY—Action by Member.—Before a member of a society can maintain a suit against it, he must exhaust a remedy given by its by-laws.—WOOD v. WHAT CHEER LODGE, No. 298, SONS OF ST. GEORGE, R. I., 35 Atl. Rep. 1045.

28. BENEVOLENT SOCIETY—Insurance—Assessments.—When a society seeks to avoid liability upon a benefit certificate on the ground that the member failed to pay an assessment within the time required by its constitution and laws, the burden of proof rests upon the society to establish the failure; and such a defense should be specially pleaded, although the plaintiff has in general terms alleged compliance with all the rules, regulations, and demands of the society.—SUPREME ASSEMBLY, ROYAL SOCIETY OF GOOD FELLOWS v. MCDONALD, N. J., 35 Atl. Rep. 1061.

29. BENEVOLENT SOCIETY—Insurance — Construction of Contract.—Where a certificate in a beneficiary society provides that it is issued on condition that the statements in the application for membership be made a part of the contract, the word "statements" includes a warranty in the application as to representations therein, and a waiver of all provisions of law preventing the applicant's physician from disclosing communications relative to his patient's physical condition.—FOLEY v. ROYAL ARCANUM, N. Y., 45 N. E. Rep. 456.

30. BILLS AND NOTES—Liability of Successive Indorsers.—Successive indorsers of commercial paper do not, in the absence of an agreement to that effect, bear the relation of sureties to one another, and are not liable for contribution.—HARRAH v. DOHERTY, Mich., 69 N. W. Rep. 242.

31. BILLS AND NOTES—Transfer—Estoppel.—Where a *feme sole* signs indorsements on notes payable to her, which clearly indicate that for value paid the title is passed to the transferee, and delivers the notes after maturity to him to be by him collected for her, a subsequent transfer of the notes by him to a *bona fide* purchaser vests title in the latter.—KEMPNER v. HUDDLESTON, Tex., 37 S. W. Rep. 1066.

32. BOND—Public Policy.—Under the city and village act of 1872 (1 Starr & C. Ann. St. art. 5, par. 63, subd. 90), providing that the consent of the owners of more than one-half of the abutting property is a condition precedent to the laying of street railway tracks in any street, a street railway company, in consideration of the consent of an owner to the laying of a single track along the street, executed a bond conditioned that it would not thereafter build any other track along said street without the consent of the obligee first obtained: Held, that the bond was void as against public policy. —DOANE v. CHICAGO CITY RY. CO., Ill., 45 N. E. Rep. 507.

33. BUILDING AND LOAN ASSOCIATION — Contract.—Where a building association agrees to keep an agency in the city in which members lived, to receive dues and installments from them, such members are not required, when such agency is discontinued, to tender their dues and installments at any other place.—PEOPLE'S BUILDING, LOAN & SAV. ASSN. v. REYNOLDS, Ind., 45 N. E. Rep. 522.

34. CARRIERS—Live Stock—Negligence.—Whether it is negligence for a carrier to drive horses loose into a pen, instead of leading them separately, so as to have them at all times under safe control, is a question for the jury.—LOESER v. CHICAGO, M. & S. P. RY. CO., Wis., 69 N. W. Rep. 372.

35. CARRIERS—Passenger—Assumption of Risk.—The contract between a railroad company, as a carrier, and a passenger does not contemplate that the passenger shall go into the express car of the train; and if he go there, and while there is injured, if his going or being in such car entered into the injury, as an element thereof, as its proximate cause, or rendering its reception more liable to occur, it would be matter of defense for the carrier; but, if not the proximate cause of the injury, or the risk of such particular injury was not increased by the action of the passenger, then that he assumed the position in the express car voluntarily would be no defense to an action for damages resultant from the injury.—FREMONT, E. & M. V. R. CO. v. ROOT, Neb., 69 N. W. Rep. 397.

36. CARRIERS—Passengers—Mutilated Ticket.—Where a passenger presents a valid ticket, though in a mutilated form, the conductor is bound to receive it, unless its condition is due to fault of the passenger, and the conductor, in the exercise of reasonable diligence, becomes satisfied that it is not valid.—HOUSTON & T. C. R. CO. v. CRONE, Tex., 37 S. W. Rep. 1074.

37. CARRIERS OF GOODS—Bill of Lading—Delivery.—The Washington statute (Hill's Ann. St. §§ 2407-2413) does not in any manner change the rule that the delivery of a bill of lading as security for an advance of money, with intent to transfer the property in the goods, is a symbolical delivery of them, and vests in the party making the advance a special property, sufficient to enable him to maintain replevin, trover, or any action against one who attaches them upon a writ against the general owner.—MERCHANTS' EXCH. BANK OF MILWAUKEE, WIS., v. MCGRAW, U. S. C. C. of App., Ninth Circuit, 76 Fed. Rep. 930.

38. CARRIERS OF GOODS—Failure to Deliver—Action. —One who has bought property agreeing to pay therefor when sales are made by the consignees, to whom he has it shipped, who are to pay the freight at the point of destination, remitting to him the proceeds less the freight, is the general owner, and entitled to sue the carrier for failure to deliver.—LOUISVILLE & N. R. CO. v. ALLGOOD, Ala., 20 South. Rep. 986.

39. CHATTEL MORTGAGES—Lien—After-acquired Property.—The lien of a chattel mortgage on a stock of goods and the accounts pertaining thereto, which provides, as authorized by Sess. Laws 1890-91, p. 90, § 18, that the mortgagor could sell the goods in the due

course of business, and replace the same with other property of the same kind, and that such after-acquired property would be subject to the mortgage, takes priority over the lien of a second mortgage on the same goods, though the former did not and the latter did specify the goods on hand and those that might afterwards be acquired, and the accounts already owing and those that might afterwards accrue. —McCORD, BRADY & CO. v. ALBANY COUNTY NAT. BANK OF LARAMIE CITY, Wyo., 46 Pac. Rep. 1093.

40. CHATTEL MORTGAGES—Recording.—A mortgagor of chattels, after the execution of the mortgage, but before it was recorded, removed the property to another county. The mortgage was subsequently recorded in the original county, but not in the county to which the property was removed, until after an attachment had been levied thereon: Held, that under Civ. Code, §§ 2957, 2959, providing that a chattel mortgage shall be void as to creditors unless recorded in the county in which the mortgagor resided, and also the county in which the property is situated or to which it may be removed, the mortgage was inoperative as against the attaching creditor.—FASSETT v. WISE, Cal., 47 N. E. Rep. 47.

41. CONSTITUTIONAL LAW—Abolition of Court.—When the constitution creates a judicial office and court, and prescribes the jurisdiction of such court, neither the office nor the court can be abolished by statute, nor can the jurisdiction of such court as to amount involved be diminished or increased by the legislature. —McDERMONT v. DINNIE, N. Dak., 69 N. W. Rep. 294.

42. CONSTITUTIONAL LAW—Appropriations.—Our constitution requires a specific appropriation made by law to authorize the expenditure of public funds. In the absence of such an appropriation, the executive officers have no power to make such expenditure, no matter how great may be the State's moral or legal obligation to pay.—STATE v. MOORE, Neb., 69 N. W. Rep. 373.

43. CONSTITUTIONAL LAW—Interstate Commerce—Sale of Cigarettes.—The Iowa statute of July 4, 1896, prohibiting the manufacture or sale of cigarettes, etc., within the State, is void, as being an unwarrantable interference with interstate commerce, in so far as it applies to the sale of cigarettes imported into the State, and sold in the original packages of importation; such packages being the usual pasteboard box, containing 10 cigarettes each, bearing the proper internal revenue stamp, and not inclosed in any other packages or wrappers.—STATE OF IOWA v. McGREGOR, U. S. C. C., N. D. (Iowa), 76 Fed. Rep. 956.

44. CONSTITUTIONAL LAW — Murder — Trial by Eight Jurors.—The description of the offense in the indictment included murder in the first degree, as well as in the second; but the crime was characterized as murder in the second degree, and the record showed that the defendant was actually tried for and convicted of that offense: Held, a trial by eight jurors did not violate section 10 of article 1 of the State constitution, nor did such trial by eight jurors violate section 7 of the same article, which declares that "no person shall be deprived of life, liberty, or property without due process of law."—STATE v. BATES, Utah, 47 Pac. Rep. 78.

45. CONSTITUTIONAL LAW — Pool Selling.—Act March 12, 1895, prohibiting pool selling except "on the premises or within the limits or inclosure of a regular race course," is unconstitutional, as being in violation of the provision of the constitution against special laws granting exclusive rights, privileges, or immunities. —STATE v. WALSH, Mo., 37 S. W. Rep. 1112.

46. CONTRACT—Construction.—In the construction of a contract the court may put itself in the place of the contracting parties, and then, in view of all the facts and circumstances surrounding them at the time the instrument was executed, consider what they intended by the terms of their contract. When the intention is manifest after such consideration, it will control in the interpretation of the instrument, regardless of careless recitals or inapt expressions.—ROCKEFELLER v. MERRITT, U. S. C. C. of App., Eighth Circuit, 76 Fed. Rep. 909.

47. CONTRACT—Marriage Brokerage.—An agreement by one engaged to be married to pay a person, if he induces the other person to the engagement to carry it into effect, cannot be enforced. — MORRISON v. RODGERS, Cal., 46 Pac. Rep. 1072.

48. CONTRACTS — Offer and Acceptance. — Defendant wrote to plaintiff for a statement as to what discount would be allowed on a "season supply" of bolts, and plaintiff replied, quoting plow bolts in bulk at 3-8 of an inch for five cents per pound "on your season supply." Defendant thereafter ordered bolts by letter stating, "Please ship us at once by freight 300 plow bolts, 3-8 of an inch." The bolts were sent on such order at five cents per pound, but on orders subsequently given they were billed at about seven cents per pound, according to the state of the market: Held, that defendant's order for a specific number of bolts was not an acceptance of the offer for a "season supply," and plaintiff was entitled to recover the market value of the goods. — MICHIGAN BOLT & NUT WORKS v. STEEL, Mich., 69 N. W. Rep. 241.

49. CONTRACTS — Rescission for Fraud.—The right to rescind a contract on the ground of fraud must be promptly exercised upon the discovery of the ground therefor. The continued use or employment of property will in such case be deemed an election to affirm the contract under which it is received.—POLLOCK v. SMITH, Neb., 69 N. W. Rep. 312.

50. CONTRACTS — Services of Architects.—In an action by architects to recover for services, evidence of a rule of compensation of architects established by architects, institutes and associations is not admissible when not accompanied by any proof that the rule was known to defendant at the time of the alleged contract, or that it was so generally accepted by the public as to give it the standing of a custom, knowledge of which was to be imputed to him.—LAVER v. HOTALING, Cal., 46 Pac. Rep. 1070.

51. CONTRACT OF SERVICE — Adoption by Receiver.—A receiver was appointed to take control of a college, with authority to adopt any contract that had been made with teachers for the ensuing year. Intervener, who had been engaged to teach, was informed by receiver that he would "make good" the contracts previously made, and that she could have her position if she desired it. Intervener entered upon the discharge of her duties under the contract: Held, that the receiver was bound by the agreement.—WORTHINGTON v. OAK & HIGHLAND PARK IMP. CO., Iowa, 69 N. W. Rep. 258.

52. CORPORATIONS—Action by Stockholders.—A petition for the appointment of a receiver for a corporation in a suit by a stockholder because of alleged unlawful acts of the president, which merely alleges "that the majority of the stock of said corporation is owned or controlled by the said D and his relatives and friends, and that the said D was at the times stated hereinafter, and still is, the president of said corporation; that the stockholders can procure no redress from the management of said company, as the same is entirely in the hand of the said president, D, under whose express directions the unlawful acts have been committed, and to whose profit they have resulted," is insufficient.—WENZEL v. PALMETTO BREWING CO., S. Car., 26 S. E. Rep. 1.

53. CORPORATION — Foreign Surety Company.—Rev. St. 1895, art. 742 provides that when any corporation cancels a bond of guaranty or indemnity executed by it, or shall notify the employer of the person whose fidelity is guarantied that said corporation will no longer guaranty or be security for the fidelity of said person, it shall furnish such person a full statement, in writing, of the facts on which the action of the corporation is based, with the name or names of the informants, and their places of residence, and prescribes a penalty of $500 for refusal to furnish the statement, etc.: Held, that such statute does not ap

ply to a foreign corporation not doing business within the State, and which receives the application for such statement in such foreign States.—MCBRIDE V. FIDELITY & CASUALTY CO. OF NEW YORK, Tex., 37 S. W. Rep. 1091.

54. CORPORATIONS — Officers — Action for Fraud.—When the same persons, officers of several corporations, form a fraudulent design to use the property and credit of such corporations for their own advantage, to the injury of the other stockholders, and do fraudulent acts in carrying out such design, all the parties affected by such acts are proper parties to a complaint based upon such fraudulent design. The persons perpetrating the fraud, and all others whose gains or losses are traceable thereto, are proper parties to an action based upon fraud.—STEVENS V. SOUTH OGDEN LAND BUILDING & IMPROVEMENT CO., Utah, 47 Pac. Rep. 81.

55. CORPORATION — Receivers — Stockholder's Liability.—A receiver appointed in an action for the sequestration of the assets of an insolvent corporation, under the provisions of Gen. St. 1894, ch. 76, has no authority, except in cases where it is otherwise provided by statute, to enforce the individual liability of the stockholders for the debts of the corporation.—MINNEAPOLIS BASEBALL CO. V. CITY BANK, Minn., 69 N. W. Rep. 331.

56. CORPORATION—Right to Receive its Stock in Payment of Debt.—While, under the statutes, a corporation is not authorized to traffic in its own stock, it may legally receive such stock in payment of an indebtedness due it, where the transaction is in good faith, and for the purpose of saving the corporation from loss.—BARTO V. NIX, Wash., 46 Pac. Rep. 1033.

57. CORPORATIONS — Sale of Property.—A corporation, though authorized "to take stock" in other corporations, cannot, without the consent and contrary to the preference of stockholders, sell all its property to another corporation, and take in payment, to be distributed among its stockholders, stock of the purchasing corporation.—ELYTON LAND CO. V. DOWDELL, Ala., 20 South. Rep. 981.

58. CORPORATION — Service of Process.—A corporation organized to manufacture and sell goods, which conducts its manufacture in the State where it is organized, but regularly sells some of its goods through a selling agent in another State, is doing business within such other State, so as to render valid a service of process made upon one of its officers while casually in such latter State on other business.—CONE V. TUSCALOOSA MANUFG. CO., U. S. C. C., S. D. (N. Y.), 76 Fed. Rep. 891.

59. CORPORATIONS — Share Held in Trust.—Testator bequeathed bank stock in trust for the use of his daughter, and, upon her death without issue, to his living children. Shortly after his death the daughter presented the certificate, indorsed by the executors, "For value received, we sell, assign, and transfer to" the daughter, the shares of stock in issue. Thereupon the bank issued new certificates to the daughter, which were, a few days later, purchased by the president of the bank. The bank had actual notice of the provisions of the will. The daughter died without issue: Held that, in the absence of evidence that there was an actual sale by the executors for value, the bank was liable to the remainder-man for the value of the stock.—COX V. FIRST NAT. BANK OF WILSON, N. Car., 26 S. E. Rep. 22.

60. CORPORATION—Stock.—A corporation canceling a certificate of stock, and reissuing another certificate to the assignee under a forged assignment, will be required to reissue to the original owner a certificate in lieu of the one conceled.—CHICAGO EDISON CO. V. FAY, Ill., 45 N. E. Rep. 534.

61. CORPORATIONS — Transfer of Stock.—Defendant agreed to purchase 1,000 shares of a certain stock from a syndicate, but before the stock was issued to such syndicate he refused to take 400 of the shares. When the stock was issued, the trustee of the syndicate executed an assignment of the 1,000 shares to the defendant, and the corporation, at such trustee's request, transferred the stock to defendant upon its ledger. Two certificates were issued, but the one for the 400 shares in question defendant never took, and it remained in the possession of the corporation.—GREENE V. SIGUA IRON CO., U. S. C. C. of App., Second Circuit, 76 Fed. Rep. 947.

62. COUNTIES — Bridge between Counties.—The liability of counties to construct bridges over waters dividing them only exists where there is a lawful highway which would be connected by them, and of which the bridge would form a part.—PEOPLE V. KINGS COUNTY, N. Y., 45 N. E. Rep. 453.

63. COUNTIES—Negligence—Damages.—County is not liable for damages sustained by reason of negligence in construction and maintenance of bridges, unless made so by statute.—DAVIS V. ADA COUNTY, Idaho, 47 Pac. Rep. 93.

64. CRIMINAL EVIDENCE — False Pretenses.—On the trial of an officer charged with cheating by false pretenses, by filing and collecting from the county a claim for money falsely claimed by him to have been paid out for transportation for poor persons, evidence of the collection of other similar fraudulent claims by defendant is admissible on the question of intent, both as showing knowleage of the character of the claim, and that the act charged was part of a systematic scheme to defraud.—STATE V. BRADY, Iowa, 69 N. W. Rep. 290.

65. CRIMINAL EVIDENCE — Homicide.—On trial for homicide, where the issue was whether the killing was intentional or accidental, testimony tending to show that defendant, though apparently friendly toward deceased, was influenced by jealousy in relation to a certain woman, was admissible.—FITZGERALD V. STATE, Ala., 20 South. Rep. 966.

66. CRIMINAL EVIDENCE—Homicide — Threats.—General threats by accused, made shortly before the killing, of his purpose to kill some one, are admissible to show malice, without proving that such threats had reference to any particular individual.—BROOKS V. COMMONWEALTH, Ky., 37 S. W. Rep. 1045.

67. CRIMINAL LAW — Accessory before the Fact.—Under Code, § 4314, which abrogates the distinction between an accessory before the fact and a principal, making both principals, it is error to charge that a defendant who did not actually commit the act constituting the crime, which was committed by another, is guilty, if at all, of whatever offense the evidence shows such other to have committed.—STATE V. SMITH, Iowa, 69 N. W. Rep. 269.

68. CRIMINAL LAW—Adultery.—Code, § 4008, providing that the crime of adultery may be committed between persons only one of whom is married, in which case both shall be guilty of the offense, and that no prosecution can be commenced except on complaint of the husband or wife, has been construed to limit the prosecution of a married person for adultery to cases where complaint is made by the spouse of the defendant; but, where a man was unmarried at the time the offense was committed, his subsequent marriage will not bar his prosecution therefor, on complaint of the husband of the woman.—STATE V. ODEN, Iowa, 69 N. W. Rep. 270.

69. CRIMINAL LAW — Bail — Forfeiture.—Under Rev. St. 1889, § 4131, providing that bail after forfeiture may, by surrendering the principal at any time before final judgment on the bail bond, after they have paid costs, discharge themselves from all liability on the bond; and section 4134, providing that, on forfeiture, the bond may be preceeded on to final judgment, although the principal may be afterwards arrested on the original charge, unless remitted by the court for cause shown—the court is authorized, where the principal is after forfeiture, rearrested by the State on the same charge, at any time before final judgment against the bail, to discharge the bail from liability on payment by them

of costs, and on showing a good cause for discharge.—STATE v. TAYLOR, Mo., 37 S. W. Rep. 1121.

70. CRIMINAL LAW—Bail — Presumption.—It will be presumed, in the absence of anything to rebut it, on a proceeding to review refusal of bail to one indicted for murder, that "the proof (of guilt) is evident or the presumption great," in which case, by provision of Const. art. 2, § 24, he is not entitled to bail.—STATE v. MADISON COUNTY COURT, Mo., 37 S. W. Rep. 1126.

71. CRIMINAL LAW—Homicide — Evidence.—A person who inflicts a dangerous wound from which death ensues cannot defend a charge of murder on the ground that deceased might have recovered had he been treated according to the most approved surgical methods.—STATE v. EDGERTON, Iowa, 69 N. W. Rep. 281.

72. CRIMINAL LAW — Homicide — Self-defense.—On trial for assault with a deadly weapon by shooting, where there was evidence that defendant feared the prosecutor, and thought he was about to attack him, it was error to refuse to submit to the jury the question whether defendant had reasonable grounds to believe that the prosecutor was about to attack him.—STATE v. HARRIS, N. Car., 26 S. E. Rep. 37.

73. CRIMINAL LAW—Rape—Instructions.—An instruction on a trial for rape that if the jury find that the prosecutrix did not consent to the act of intercourse, directly or by inference, they will be justified in finding that it was by force, while not to be approved, may not constitute prejudicial error when considered with the other instructions.—STATE v. BEABOUT, Iowa, 69 N. W. Rep. 429.

74. CRIMINAL LAW—Recognizance — Execution.—It is not essential to the validity of a recognizance given by defendant, upon appeal from a conviction of a violation of a city ordinance, that the recognizance should be executed in the presence of the police court or police judge, or that its execution should be acknowledged before such court or officer.—CITY OF KANSAS CITY v. FAGAN, Kan., 46 Pac. Rep. 1009.

75. CRIMINAL LAW — Subornation of Perjury.—In a prosecution under Code, § 3938, providing that "if any person endeavor to incite or procure another to commit perjury, though no perjury be committed, he shall be punished," etc., the State need only prove the falsity of the matter to which defendant attempted to procure the oath, by the testimony of one witness.—STATE v. WADDLE, Iowa, 69 N. W. Rep. 279.

76. CRIMINAL PRACTICE — Assault with Intent to Kill.—An indictment charging that defendant feloniously and with malice aforethought made an assault upon his wife, "and did then and there willfully and feloniously, with said razor, cut, wound, and stab" his wife, "with a felonious intent then and there to kill and murder her," is not objectionable, as not charging that the assault was committed with intent to kill, but merely charging that the battery was committed with such intent.—STATE v. CLARK, Iowa, 69 N. W. Rep. 257.

77. CRIMINAL PRACTICE — False Pretenses — Indictment.—Under Bill of Rights, § 22, and U. S. Const. Amend. art. 6, declaring that an accused shall have the right to demand the nature and cause of the accusation, an indictment (under Rev. St. 1889, § 3564, making it an offense for any one, designedly, by false writing or other false pretense, to obtain money, etc., from another) against one for procuring the payment by a bank of overdrafts to a specified amount drawn on it by him, by falsely representing that he was the owner of a certain note, which avers neither the date, amount, or date of maturity of the note; nor that the maker was, or was represented by defendant to be, solvent; nor that the overdrafts were authorized by reason of defendant's representations; nor the dates, amounts, or payees of such overdrafts—is bad for uncertainty.—STATE v. BARBEE, Mo., 37 S. W. Rep. 1119.

78. CRIMINAL PRACTICE — Homicide.—An indictment cannot be complained of because alleging commission of the crime by striking with "a heavy, blunt instrument, a more particular description of which is to the prosecuting attorney unknown," where the evidence does not show that its description was known by him at the time.—STATE v. CAREY, Wash., 46 Pac. Rep. 1050.

79. DAMAGES—Future Suffering.—Damages for physical pain and mental suffering in the future, resulting from a personal injury, will be allowed where it is established, to a reasonable certainty, that such pain and suffering will be endured.—NICHOLS v. BRABAZON, Wis., 69 N. W. Rep. 342.

80. DAMAGES — Personal Injuries.—In an action for personal injuries, an instruction that, if plaintiff is unable to perform manual labor, he should be compensated therefor, without authorizing the jury to consider his capacity to earn money otherwise than by manual labor, is erroneous.—LAIRD v. CHICAGO, R. I. & P. RY. CO., Iowa, 69 N. W. Rep. 414.

81. DEED—Conditional Delivery—Estoppel.—Where an owner of land, under a verbal agreement for the sale of it, places the purchaser in possession, and executes a deed, and places it in the hands of a third person, with direction to deliver it on the purchase money being paid or secured by mortgage, and the grantee induces the holder of the deed to deliver it to him that he may exhibit it as evidence of title, and the grantee does so to one ignorant of the facts, and who in good faith makes him a loan secured by mortgage on the property, the grantor in such case is estopped from setting up his claim to the land or a lien on it for purchase money, against such innocent mortgagee.—SHURTZ v. COLVIN, Ohio, 45 N. E. Rep. 527.

82. DEED—Conditional Delivery — Waiver.—A condition that a deed shall become effective when the title is approved by the grantee's attorney is for the grantee's benefit, and is waived by him when he places the deed on record.—HENDRICKS v. EDMISTON, Wash., 47 Pac. Rep. 29.

83. DEEDS—Confidential Relations—Burden of Proof.—When a deed is attacked on the ground of fraud in the grantee, by taking advantage of confidential relations between himself and the grantor, and the answer admits such relations, the burden is upon the grantee to show that the grantor was not influenced by these relations in making the deed.—STARR v. DE LASHMUTT, U. S. C. C., D. (Oreg.), 76 Fed. Rep. 907.

84. DEED—Correcting Mistake.—A grantor is entitled to have a mistake in a deed corrected without regard to whether the grantee knew, at the time the deed was delivered, that it contained a greater estate than bargained for.—DULO v. MILLER, Ala., 20 South. Rep. 981.

85. DEEDS—Delivery.—Where deeds are delivered by the grantor to a third person, to be delivered on his death to the grantees, and the grantor parts with all dominion over them, and reserves no right to recall the deeds or alter their provisions, the title passes at the time of the delivery of the deeds to such third person.—STOUT v. RAYL, Ind., 45 N. E. Rep. 515.

86. DEED—Knowledge of Grantee.—Where a grantee named in a deed subsequently conveys in due form the land described, it is immaterial that the deed was executed without his knowledge, and was not actually delivered to him, but was delivered to the party who actually purchased the land and procured the execution of the deed in which he was named as grantee. He acquiesces and assents to the transaction by his subsequent conveyance. Nor is the validity of the deed to him affected by the fact that his grantor had no knowledge, when executing and delivering the same, that the real purchaser was not named as grantee therein.—CROWLEY v. C. N. NELSON LUMBER CO., Minn., 69 N. W. Rep. 321.

87. DEED—Mortgages— Parol Evidence.—It may be shown by the evidence *aliunde* the instrument itself that a deed of conveyance, absolute on its face, was, by the mutual understanding and agreement of the parties thereto, executed as a mortgage for security merely; and it may be foreclosed as such.—BARNES v. CROCKETT, Kan., 46 Pac. Rep. 997.

88. DEED—Sheriff's Sale—Effect on Dower.—The purchaser at a sheriff's sale of the land of the husband, on judgment against the husband, takes the land subject to the wife's inchoate right of dower.—LYNDE v. WAKEFIELD, Mont., 47 Pac. Rep. 5.

89. DIVORCE—Alimony—Counsel Fees.—What sum a husband may be required to pay to his wife for her support during the pendency of a divorce suit for her "expenses" in prosecuting or defending the action, for counsel fees, and whether such sum shall be paid before the final hearing of the action, and as a condition precedent to the right of the husband to further prosecute or defend, are matters within the discretion of the district court.—BRASCH v. BRASCH, Neb., 69 N. W. Rep. 892.

90. DIVORCE—Allegation and Proof of Residence.—The complaint in an action for divorce should show affirmatively that, when the action was commenced, plaintiff had been a resident of the State for a year; but, when such allegation is made, and is sustained by the proof, the fact that an amended complaint alleges only that plaintiff has been a resident for more than a year when it is filed is not a fatal defect on demurrer.—LUCE v. LUCE, Wash., 47 Pac. Rep. 21.

91. DRAINAGE ASSESSMENT.—A purchaser at a sale to enforce the State's lien for a drainage assessment is, in case the sale is invalid, subrogated to the lien of the State to the extent of the amount thereof discharged by the money paid by him.—REED v. KALFSBECK, Ind., 45 N. E. Rep. 476.

92. ELECTIONS—Ballots.—A party to an election contest is not estopped from objecting that the entire vote of a township is illegal, because the ballots cast therein are all illegal; by offering in evidence ballots cast therein for himself, to be counted for him only in case the ballots are declared legal, and the vote of the township held valid.—COOK v. FISHER, Iowa, 69 N. W. Rep. 364.

93. ELECTION—Certificate of Nomination.—The provision of the statute (section 136, ch. 26) known as the "Australian Ballot Law," requiring objections to a certificate of nomination of candidates for office to be filed within three days after the filing of such certificate, are mandatory, and must be strictly followed, else said certificate, if in conformity with law, will be deemed valid.—STATE v. PIPER, Neb., 69 N. W. Rep. 383.

94. ELECTIONS—Certificate of Nomination.—The secretary of State, in passing upon objections to a certificate of nomination for a public office, is not confined alone to the consideration of objections as to matters of form, but has the power to decide from extrinsic evidence whether the candidate named in such certificate was in fact nominated by a convention called and held in accordance with the precedents and usages of a political party which cast 1 per centum of the votes of the State at the last general election, or by a faction in good faith claiming to represent a party casting such a per centum of the votes of the State.—STATE v. PIPER, Neb., 69 N. W. Rep. 384.

95. EMPLOYER'S LIABILITY INSURANCE—Construction of Policy.—Under a clause in an employer's liability policy which extends the insurance to injuries caused to third persons, and provides that "the assured, upon the occurrence of any accident, and upon notice of any claim on account of any accident, shall give immediate notice in writing of such accident or claim," the assured need not give notice until after a claim for damages has been presented against it by the person injured.—GRAND RAPIDS ELECTRIC LIGHT & POWER CO. v. FIDELITY & CASUALTY CO., Mich., 69 N. W. Rep. 249.

96. ESTOPPEL IN PAIS.—An employee who consents that his employer shall pay into court the amount of a claim and costs for which his wages in the employer's hands have been garnished, and agrees to accept the balance due him, cannot thereafter maintain suit against the employer to recover the full amount of his wages, on the ground that the garnishment proceedings were irregular, and that the employer was not legally bound to pay the money into court.—BALTIMORE & O. S. W. R. CO. v. MANNING, Ind., 45 N. E. Rep. 526.

97. EVIDENCE—Declarations of Agent.—In an action for damages caused by a fire negligently set out by defendant's agent, who was also a party defendant, declarations and admissions made by the agent after the fire were admissible as against him.—ALLEN v. BARRET, Iowa, 69 N. W. Rep. 272.

98. EVIDENCE—Insolvency.—The rule that insolvency cannot be proved by mere reputation does not render testimony as to the notoriety of the fact of insolvency, established by other evidence, incompetent for the purpose of showing notice or knowledge.—MARTIN v. MAYER, Ala., 20 South. Rep. 963.

99. EVIDENCE—Parol Evidence.—A deed contained a covenant that the premises were free of incumbrances, except two mortgages, particularly described, and warranted against all claims except such mortgages: Held, in an action by the grantee to recover the interest paid on such mortgages, that parol evidence was admissible to show that the contract was that defendant was to pay, not only the interest accrued, but also the interest on the mortgages to a certain future time.—FORD v. SAVAGE, Mich., 69 N. W. Rep. 240.

100. EXECUTION—Property Subject.—A set of abstract books is corporeal, tangible property, and the subject of levy and sale under execution.—WASHINGTON BANK OF WALLA WALLA v. FIDELITY ABSTRACT & SECURITY CO., Wash., 46 Pac. Rep. 1036.

101. FEDERAL COURTS—Jurisdiction.—A mortgagee, holding by assignment a contract made between two corporations of the same State, cannot sue in a federal court for the specific performance of such contract, though itself a corporation of another State.—BOSTON SAFETY & DEPOSIT CO. v. CITY OF PLATTSMOUTH, U. S. C. C., D. (Neb.), 76 Fed. Rep. 881.

102. FEDERAL COURTS — Receivers.—Where the subject-matter of an action involves the acts and rights of a receiver appointed by a federal court, it constitutes a case arising under the laws of the United States, and is therefore within the jurisdiction of a federal court.—KEIHL v. CITY OF SOUTH BEND, U. S. C. C. of App., Ninth Circuit, 76 Fed. Rep. 921.

103. FRAUDS, STATUTE OF—Contract by Agent.—The contract of an agent in the name of his principal for the sale of lands in this State is void under the provision of our statute of frauds, unless the authority of the latter is evidenced in writing.—O'SHEA v. RICE, Neb., 69 N. W. Rep. 808.

104. FRAUDS, STATUTE OF—Contract Relating to Land.—A parol promise by an employer to give his employee $15 a month and the cottage where he then lived for her services, though void under the statute of frauds, may be used, in an action by the employee for the services after they are performed, as a basis for establishing their value.—RHEA v. MEYERS' ESTATE, Mich., 69 N. W. Rep. 239.

105. FRAUDS, STATUTE OF—Delivery of Goods.—Defendant contracted to purchase of plaintiffs a quantity of hay, but at the time of the contract there was no memorandum made, or part performance, as required under the statute of frauds. A short time thereafter defendant sent his employees to bale the hay ready for shipment: Held that, in view of further testimony that the hay was to be delivered by plaintiffs to defendant at a certain railroad station after being baled, it was error to instruct the jury that the steps taken to bale the hay constituted a delivery, taking the contract out of the statute of frauds.—CORBETT v. WOLFORD, Md., 35 Atl. Rep. 1088.

106. FRAUDS, STATUTE OF—Sufficiency of Writings.—Plaintiff's written petition to the city council for a right of way and privilege to lay a sewer in certain streets, specifically describing the *termini* of the sewer

and its exact locality in the streets named, was, by resolution, referred to the committee on sewerage, with power to act, such resolution being spread on the records of the council. Plaintiff was authorized to proceed with the work on giving bond, and a bond, referring to the petition, was thereupon executed, approved by the chairman of the committee, received by the council, and filed in the proper office: Held sufficient to satisfy the statute of frauds relating to transfers of interests in land.—STEVENS v. CITY OF MUSKEGON, Mich., 69 N. W. Rep. 227.

107. FRAUDULENT CONVEYANCE — Bona Fide Purchaser. — A debtor conveyed land to his wife in fraud of his creditors. Afterwards a creditor sued the husband, and the sheriff levied on the interest of the husband in the land by filing a copy of the writ and notice of attachment in the county auditor's office: Held, that a subsequent purchaser from the wife for value without actual notice of the levy was a *bona fide* purchaser without notice of any incumbrance.—CLERF v. MONTGOMERY, Wash., 46 Pac. Rep. 1028.

108. FRAUDULENT CONVEYANCES—Consideration—Evidence.—On an issue as to whether the grantee in a deed sought to be set aside as fraudulent had paid a certain sum for the transfer, a receipt, signed by the grantor, to the truth of which both he and the grantee testified, sufficiently shows such payment, though the manner in which the payment was alleged to have been made was improbable because of the state of the grantee's business affairs, though no writing passed between the parties, other than the deed and the receipt, and though the grantee took no active part in defending the transfer.—WARNER v. WITHROW, N. J., 35 Atl. Rep. 1057.

109. FRAUDULENT SALE — Retention of Possession.—Upon a sale of a sawmill, the vendors leased the property from the vendees, and continued in possession, operating the mill under such lease: Held, that this was not such a retention of possession as would constitute a badge of fraud.—SMITH v. JONES, Ark., 37 S. W. Rep. 1052.

110. GARNISHMENT. — A treasurer of a corporation who has money of the corporation in his hands, which has not been demanded, is subject to garnishment in an action against the corporation, under Rev. St. § 3719, which provides that the garnishee shall stand liable to the amount of the money, belonging to the defendant, in his hands.—MAYO v. HANSEN, Wis., 69 N. W. Rep. 344.

111. GUARANTY — Construction. — Defendant, in writing, guarantied the payment to plaintiff of any money collected by one O as employee of plaintiff, or advanced to him, or indebtedness due plaintiff in excess of the amount due O under the agreement of employment. The agreement provided that O should sell goods on commission, paying his own expenses, and bear a proportion of the losses by bad debts: Held that, as the agreement provided that O should pay his own expenses, defendant was not liable, under his guaranty, for the repayment of money advanced to O for the payment of expenses.—JOHN A. TOLMAN CO. v. RICE, Ill., 45 N. E. Rep. 496.

112. GUARANTY — Joint Liability. — A guaranty, after providing that "we and each" of the guarantors agree to pay, or cause to be paid, "all of the liabilities" of a corporation to the guarantee, provided that the guarantors were to pay any sum which may accrue thereunder in the proportion which the amounts of stock then held by each of the guarantors in the corporation bore to the whole amount of the capital stock: Held, that the guarantors were jointly and severally liable for the full amount of the liabilities of the corporation, and not merely severally liable in the proportion which the amount of stock held by each bore to the whole amount of capital stock.—WISCONSIN MARINE & FIRE INS. CO. BANK v. WILKIN, Wis., 69 N. W. Rep. 354.

113. HABEAS CORPUS.—A proceeding in *habeas corpus*, instituted and had before the judge of a district court, for the discharge of the petitioner from an illegal imprisonment, if subject to review on petition in error, is appealable to the supreme court, and not to the court of appeals. — STEVENS v. MOORE, Kan., 46 Pac. Rep. 1011.

114. HIGHWAYS.—The failure to grade and use a highway to its full width does not constitute an abandonment of the part not used.—BROWN v. HIATT, Ind., 45 N. E. Rep. 481.

115. HIGHWAYS—What Constitute.—A way used for 9 years as a neighborhood road by persons going to and from church, and to mill during high water, but never established by legal proceedings, by dedication, or by user, accepted and recognized by competent authority, being kept up by voluntary labor on the part of those using it, and always under the exclusive control of the person over whose land it passes, is not a public highway.—STATE v. GROSS, N. Car., 26 S. E. Rep. 91.

116. HUSBAND AND WIFE — Community Contract. — Where a wife joins her husband in making a note in payment of one upon which he was surety, and which was secured by a mortgage, and it is agreed that they are to have the mortgage, on the payment of their note, it is a community contract; and the wife is bound by an extension of their note, or by any other action of the husband which is for the benefit of the community interest.—MCKEE v. WHITWORTH, Wash., 46 Pac. Rep. 1045.

117. HUSBAND AND WIFE—Contracts Between.—Code, § 1836, declares all contracts between husband and wife, subject to restrictions contained in the preceding section, valid, unless contrary to public policy. Section 1835 provides that no contract between them shall be valid to impair or change the "body" or capital of the personal estate of the wife for a longer time than three years next ensuing, unless it shall be in writing, as required for conveyances of land, etc.; and that the officer taking the private examination of the wife must certify that it is not unreasonable or injurious to her: Held, that a policy of life insurance for the wife's benefit constitutes a part of the body of her personal estate, within section 1835, and a mere written assignment by her to her husband of her interest is invalid.—SYDNOR v. BOYD, N. Car., 26 S. E. Rep. 92

118. HUSBAND AND WIFE—Maintenance — Fraudulent Conveyances.—Under Civ. Code, § 137, which authorizes a deserted wife to sue the husband for the maintenance of herself and of her children, if any, the wife is so far his creditor as to be within Civ. Code, § 3439, which avoids conveyances made in fraud of creditors, and it avoids a conveyance made by the husband with the design to defeat the wife's right of maintenance.—MURRAY v. MURRAY, Cal., 47 Pac. Rep. 87.

119. HUSBAND AND WIFE—Pledge of Wife's Property.—Personal property which belonged to the wife prior to the marriage cannot be pledged by the husband, without her consent, for payment of his debts.—KNIGHT v. BECKWITH COMMERCIAL CO., Wyo., 46 Pac. Rep. 1094.

120. INJUNCTION—Restraining Action under Probate Decree. — Injunction will lie, at the suit of one claiming an interest in an estate by virtue of an agreement with certain of the heirs at law, and also with a devisee under the will, to restrain distribution under a foreign probate decree alleged to have been procured by some of the defendants by virtue of a fraudulent conspiracy, if part of the defendants appear, and it is not shown that the other defendants have not been, or may not be, properly served with process, though the bulk of the property involved is in the State where such decree was rendered.—DAVIS v. CORNUE, N. Y., 45 N. E. Rep. 449.

121. INSURANCE — Concurrent Insurance. — Notwithstanding a provision in a policy against concurrent insurance, the insurer will be held to have consented to insurance which the agent through whom the policy was issued knew had been applied for and would be issued.—ERB v. FIDELITY INS. CO., Iowa, 69 N. W. Rep. 261.

122. INSURANCE—Condition of Policy.—A provision of a fire insurance policy that it shall be void in case the insured procures additional insurance, "unless consent in writing is indorsed hereon by the company," is a valid condition; and under a further provision that no agent of the company has any authority to waive or modify any of its conditions, the secretary of the company cannot be presumed, in the absence of proof, to have power to consent for the company to the procuring of additional insurance, or to waive the indorsement of such consent on the policy.—O'LEARY v. MERCHANTS' & BANKERS' MUT. INS. CO. OF DES MOINES, Iowa, 69 N. W. Rep. 420.

123. INSURANCE — Parol Contract. — Where a written application for insurance against fire, stating the property to be insured, the rate, amount of insurance wanted, and amount of the premium, is presented to and accepted by the company, which promises to issue the policy, the oral contract for insurance is complete, and the liability of the company for loss may be enforced in an action declaring on the oral contract, though the policy was never in fact issued.—FIREMEN'S INS. CO. v. KUESSNER, Ill., 45 N. E. Rep. 540.

124. INSURANCE — Total Loss.—There can be no total loss so long as the remnant of the structure standing is reasonably adapted for use as a basis on which to restore the building to the condition in which it was before the injury.—ROYAL INS. CO. v. MCINTYRE, Tex., 37 S. W. Rep. 1068.

125. INSURANCE POLICY — Pleading. — Under our system, in a suit upon a written contract, it makes no difference whether a contract is set out in *hæc verba*, or whether it is annexed, and by proper reference made a part of the pleading. However, matters of substance, which are preliminary or collateral to the instrument must be properly averred, so that the ultimate facts for which it was incorporated will be clearly and distinctly presented; and, if the instrument should be defective or ambiguous, it is incumbent upon the pleader to place upon it some construction by proper allegation, or else a demurrer will lie.—STEPHENS v. AMERICAN FIRE INS. CO., Utah, 47 Pac. Rep. 83.

126. INTOXICATING LIQUORS — Unauthorized Sale.—Where an agent, working on a monthly salary, at A, takes individual orders for beer, and sends them to his principal at B, and the orders are shipped in gross to the agent at A, and he delivers the individual orders, collects the money for them, and forwards it to his principal, the sales are made at A.—PEOPLE v. DE GROOT, Mich., 69 N. W. Rep. 248.

127. JUDGMENT — Assignment. — Where a landlord's attachment is issued, and the property of the tenant is seized, and judgment is rendered for the landlord, on assignment of the judgment all right of the judgment creditor to recover damages against the sheriff for negligence in the care of the property seized passes to his assignee. — CITIZENS' NAT. BANK v. LOOMIS, Iowa, 69 N. W. Rep. 443.

128. JUDGMENT—Fraud — Equitable Relief.—A personal judgment, rendered by default, which was not warranted by the allegations of the petition, and was procured by fraud practiced by plaintiffs and their attorney, will be set aside in equity, though the original notice claimed a personal judgment against him.—LARSON v. WILLIAMS, Iowa, 69 N. W. Rep. 441.

129. JUDGMENT — Vacation.—The effect of the vacation of a judgment for irregularity in obtaining it, after the sale of personal property on an execution thereon, and its purchase by the execution plaintiff, is the same as a reversal of the judgment would be, and it operates to vacate the sale as between the parties.—BENNEY v. CLEIN, Wash., 46 Pac. Rep. 1037.

130. LANDLORD AND TENANT—Assignment.—Though a lease for a definite term of years contains no express covenant to pay rent, yet the lessee cannot discharge himself from liability for future rent by an assignment of the lease without the lessor's consent.—CONSUMERS' ICE CO. v. BIXLER, Md., 35 Atl. Rep. 1086.

131. LIBEL — Liability of Corporation.—When a corporation is engaged in publishing a newspaper, and from the evidence it may be inferred that a libelous article published therein has been edited and published by some person employed for that purpose, the corporation will be liable to the person libeled to the same extent that an individual would be who had personally made such a publication.—HOBOKEN PRINTING & PUBLISHING CO. v. KAHN, N. J., 35 Atl. Rep. 1053.

132. LICENSE—Revocation.—A license to erect a stairway over the licensor's land for entrance to the upper story of a building to be built by the licensee, is, after execution, irrevocable.—JOSEPH v. WILD, Ind., 45 N. E. Rep. 467.

133. LIFE INSURANCE — Breach of Conditions.—A mutual life association is estopped to claim a forfeiture of a policy for breach of a condition forbidding the insured to reside south of a particular parallel of latitude, when the general manager of the association, acting within the scope of his duties, after receiving proofs of loss which show on their face that the insured resided within the prohibited territory at the time of his death, returns them to the beneficiary for amendment, inclosing blanks for making new proofs, if necessary, and the beneficiary, at a substantial expense, makes the desired corrections.—KIDDER & KNIGHTS TEMPLARS & MASONS LIFE INDEMNITY CO., Wis., 69 N. W. Rep. 364.

134. LIMITATIONS — Accrual of Cause of Action.—A cause of action against an abstractor of titles for giving a wrong certificate of title accrues at the date of the delivery, and not at the time the negligence is discovered or consequential damages arise.—PROVIDENT LOAN TRUST CO. v. WALCOTT, Kan., 47 Pac. Rep. 8.

135. LIMITATION—Actions against Executors and Administrators.—Pub. St. ch. 189, § 8, and ch. 205, § 9 (statutes of limitation as to actions against executors and administrators), are applicable to a suit in equity brought by a creditor, and may be pleaded in the answer.—WARREN v. PROVIDENCE TOOL CO., R. I., 35 Atl. Rep. 1041.

136. MALICIOUS PROSECUTION — Defense.—Malicious prosecution will lie against one who procures a search warrant requiring a search of plaintiff's property for stolen goods, though the proceedings do not "involve any charge of crime," especially since Rev. St. 1894, §§ 1688, 1689, which provide for issuing search warrants, do not require that the owner of the property to be searched shall be charged with the commission of a crime.—HARLAN v. JONES, Ind., 45 N. E. Rep. 481.

137. MALPRACTICE.—Under a complaint alleging negligent and unskillful treatment of plaintiff's finger by defendant, resulting in injury, recovery cannot be had for failure of defendant, after treating it, to be present at his office, and render such services as the finger may have required.—DASHIELL v. GRIFFITH, Md., 35 Atl. Rep. 1094.

138. MANDAMUS.—The writ of *mandamus* can only be invoked to compel the performance of some particular act which the law specially enjoins as a duty resulting from an office, trust, or station. As a preventative remedy, it cannot take the place of injunction.—STATE v. PIPER, Neb., 69 N. W. Rep. 378.

139. MARRIED WOMAN — Wife's Chattels — Rights of Husband.—Under the common law, in force in this State prior to the taking effect of the married woman's act, June 1, 1871, the wife's chattels became those of the husband, and her choses in action became his when reduced to possession.—EGGLESTON v. SLUSHER, Neb., 69 N. W. Rep. 310.

140. MASTER AND SERVANT — Assumption of Risk.—One who engages in a hazardous employment assumes all risks incidental thereto, but is not bound to anticipate such dangers connected therewith as arise solely from the negligence of others, not in law his fellow-servants; and therefore his failure to foresee and guard against dangers of the latter class does not raise against him, nor his personal representatives, a

presumption of contributory negligence.—CLEVELAND, C. C. & ST. L. RY. CO. v. KERNOCHAN, Ohio, 45 N. E. Rep. 531.

141. MASTER AND SERVANT—Contributory Negligence.—The relation of fellow-servant does not exist between an assistant foreman in a horseshoe shop and a boy operative who is under his control and subject to his orders, so as to relieve the master from liability to the boy for negligence of the assistant foreman.—FOLEY v. CALIFORNIA HORSESHOE CO., Cal., 47 Pac. Rep. 42.

142. MASTER AND SERVANT—Contributory Negligence.—A minor cannot recover damages from his employer for an injury in consequence of a defective car track, which it was his duty to repair, in a room in which he was working.—BUTTE v. PLEASANT VALLEY COAL CO., Utah, 47 Pac. Rep. 77.

143. MASTER AND SERVANT—Dangerous Occupation.—To hold the employer liable in an action for personal injuries, where it is sought to excuse the employee's seeming carelessness on the ground that he was obliged to obey an order, plaintiff must show that the employee's relations to the superior, under whose order he acted, were such as to inspire a well-founded fear of dismissal in case of disobedience.—TURNER v. GOLDSBORO LUMBER CO., N. Car., 26 S. E. Rep. 23.

144. MASTER AND SERVANT — Defective Appliances—Negligence.—Plaintiff was injured by the slipping of a pinch bar with which he was attempting to move an engine. It appeared that plaintiff was a machinist of 20 years' experience, and knew that a bar would slip unless the heel was sharp, and that he did not examine the bar before using it to ascertain its condition, though the fact that it was defective was easily seen: Held, that plaintiff was negligent, precluding recovery.—HOLT v. CHICAGO, M. & ST. P. RY. CO., Wis., 69 N. W. Rep. 352.

145. MASTER AND SERVANT—Fellow-servants.—An employee operating a machine in defendant's machine shops is a fellow-servant of a machinist engaged in placing shafting, though the same foreman did not have control over them.—TRCKA v. BURLINGTON, C. R. & N. RY. CO., Iowa, 69 N. W. Rep. 422.

146. MASTER AND SERVANT—Negligence.—The failure of an employer to box gearings and revolving shafts in a paper mill is not negligence where the usual and ordinary care was used in the maintenance of the machinery.—WABASH PAPER CO. v. WEBB, Ind., 45 N. E. Rep. 474.

147. MASTER AND SERVANT—Negligence—Instruction.—In an action by a servant against his master for injuries received from the fall of a timber which was being raised by a rope, which slipped off, an instruction that it was "liable" to slip off is erroneous.—WILLIAMS v. SOUTHERN RY. CO., N. Car., 26 S. E. Rep. 32.

148. MASTER AND SERVANT — Negligence of Co-servant.—It is the duty of the master to furnish proper implements to his servants for the performance of their work, and if he intrusts that duty to a co-servant the master is liable for the negligence of the co-servant in performing it.—MAHAR v. THROPP, N. J., 35 Atl. Rep. 1057.

149. MECHANICS' LIENS—Building on Adjoining Lots.—In a proceeding to enforce a mechanic's lien under the provisions of Mills' Ann. St. ch. 77, div. 2, where the material was furnished for, and the work done upon, two adjoining houses, erected under one contract, upon three adjoining lots, each house being situated partly on an outside lot, and partly on the middle lot, the three lots must be regarded as constituting but one tract of land, and subject to the whole lien, irrespective of the particular portion of the material or labor which went into each house.—SMALL v. FOLEY, Colo., 47 Pac. Rep. 64.

150. MECHANICS' LIENS—Clerical Error.—A mechanic's lien is not invalidated by a clerical error therein as to the amount due on the building.—SNELL v. PAYNE, Cal., 46 Pac. Rep. 1069.

151. MECHANICS' LIENS—Contract against Liens.—The right of a contractor to a lien is not affected by a provision in the contract that he will satisfy every claim, and hold the owner harmless from all liens in respect thereto.—CHILDRESS v. SMITH, Tex., 37 S. W. Rep. 1078.

152. MECHANIC'S LIEN — Personal Action.—Under 1 Hill's Code, § 1676, providing that the obtaining of a mechanic's lien shall not affect the right of material men to maintain a personal action for the goods sold, one furnishing material who has obtained a lien can sue the contractors for the materials furnished.—PORVIN v. WICKERSHAM, Wash., 47 Pac. Rep. 25.

153. MECHANIC'S LIEN—Priority.—Under the mechanic's lien provided for by Code, § 1781, and made superior to the homestead exemption by Const. art. 10, § 4, when the contractor undertakes to put up a building and complete it, the contract is indivisible, and his lien embraces the entire outlay, whether in labor or material.—BROYHILL v. GAITHER, N. Car., 26 S. E. Rep. 31.

154. MINES—Bona Fide Claimant—Improvements.—Defendants having taken possession of plaintiff's mine with its consent, and having worked it and sold ores extracted, and having received the proceeds, believing they had a right to, upon a decree returning the mine to the owner such defendants should be allowed to retain the reasonable cost of extraction, expenditure of sampling, transportation, and sale; and, in addition, they should be compensated reasonable expenditures for its preservation, development, and permanent improvement, to the extent its value was enhanced thereby.—WASATCH MIN. CO. v. JENNINGS, Utah, 46 Pac. Rep. 1106.

155. MINING CORPORATIONS—Statutory Regulations.—Act April 23, 1880 (St. 1880, p. 134), requiring directors of mining corporations to make, or cause to be made and posted, the weekly reports of the superintendent, does not, by restricting the action of domestic corporations, violate Const. art. 12, § 15, providing that no foreign corporation shall be allowed to transact business within the State on more favorable terms than are prescribed by law to similar corporations organized under the laws of the State.—MILES v. WOODWARD, Cal., 46 Pac. Rep. 1076.

156. MORTGAGE—Absolute Deed.—A conveyance of the mortgaged premises by the mortgagor to the mortgagee, by delivery of deed in escrow, to be delivered in case of the non-payment of the mortgage deed within a certain time, will be set aside where the property is of double the value of the indebtedness.—BRADBURY v. DAVENPORT, Cal., 46 Pac. Rep. 1062.

157. MORTGAGE — Foreclosure. — Where land mortgaged to a clerk of court to secure a fine and costs is sold by the clerk under a power in the mortgage, a deed executed by him after he has gone out of office vests no title in the purchaser.—SHEW v. CALL, N. Car., 26 S. E. Rep. 33.

158. MORTGAGES — Payment of Note—Reissue. — An owner of land conveyed the same, and obtained from the grantee a note secured by a trust deed. No consideration was paid by the grantee, and the note was made for the accommodation of the grantor. The grantee thereafter reconveyed the premises, and the grantor, sold the note. After it became due, the grantor paid the same: Held, that as the note had not been paid by the maker, it was in the power of the payee to reissue it, as against himself, and its transfer carried with it the deed of trust given on the property to secure its payment.—KELLY v. STAED, Mo., 37 S. W. Rep. 1110.

159. MORTGAGE—Right to Growing Crops.—A mortgage of real estate provided, in the case of foreclosure, for the appointment of a receiver of the rents and profits: Held that, in the absence of the affidavit required in mortgages of growing crops, such mortgage did not entitle the receiver to a crop growing on the land in possession of a tenant, but only so much thereof as was duly reserved for rent.—SCOTT v. HOTCHKISS, Cal., 47 N. E. Rep. 45.

160. MORTGAGE—Separate Mortgages—Foreclosure.—The plaintiffs held two mortgages, under two separate debts, on the same property. Judgment without sale of the property was had on the first mortgage, and then both causes were consolidated before the trial in the second suit, without objection: Held that, while the plaintiffs ought to have foreclosed both mortgages in one suit, the lien of the mortgages foreclosed in the second was not lost by reason of the first suit.—THOMPSON V. SKEEN, Utah, 46 Pac. Rep. 1103.

161. MORTGAGE FORECLOSURES—Necessary Parties.—The holder of a first mortgage is not a necessary party to a suit for the foreclosure of a second mortgage, unless a decree is sought for the sale of the land free from all liens, in which case the holder of the first mortgage is a necessary party.—MCCLURE V. ADAMS, U. S. C. C. D. (Neb.), 76 Fed. Rep. 899.

162. MUNICIPAL CORPORATIONS — Cemeteries — Ordinance.—Where the burial of a human body within a prescribed district is prohibited by ordinance, and the sale or purchase of a lot therein for burial purposes is made a misdemeanor, such sale or purchase cannot be made the basis of a misdemeanor till the offense of such burial has been committed.—EX PARTE BOHEN, Cal., 47 Pac. Rep. 55.

163. MUNICIPAL CORPORATIONS — City Warrant.—Where a city warrant shows on its face that the council has directed its issuance, and for what purpose, as required by Rev. St. 1895, art. 409, is not essential to its validity that the warrant itself, or the order of the council, should specify from what particular fund it is payable, unless a special fund, for a special purpose, has been created by ordinance, as authorized by Rev. St. 1895, art. 416.—MINOR V. LOGGINS, Tex., 37 S. W. Rep. 1086.

164. MUNICIPAL CORPORATION — Contracts.—When a municipal body, acting within the scope of its chartered powers, has entered into a contract for a public improvement, in pursuance of proceedings regular on their face, and such contract has been performed by the other party, the fact that the preliminary proceedings were irregular constitutes no legal defense to a suit upon the contract against the municipality.—STATE V. LONG BRANCH POLICE, SANITARY & IMPROVEMENT COMMISSION, N. J., 35 Atl. Rep. 1070.

165. MUNICIPAL CORPORATION — License—Occupation Tax.—A tax authorized by a city charter to be levied on "auctioneers, contractors, druggists, omnibuses, carts, wagons and other vehicles used in the city for pay," in addition to the usual taxes assessed and collected on all property, is a tax on the occupation; and the fact that a defendant, who is the owner of a wagon, used it one or two instances for hire will not alone support a conviction for his failure to procure a license for such wagon, but it must be shown that the vehicle is kept for hire or use for pay.—CITY OF CHEYENNE V. O'CONNELL, Wyo., 46 Pac. Rep. 1088.

166. NEGLIGENCE.—The seller of a wringer operated by a hand power sent a machinist to arrange it so as to apply steam power. The machinist requested the purchasers' manager to assist him in adjusting the belt. When the machinery was started the wringer was pulled loose from the floor because not sufficiently fastened by the machinist, and the manager was killed without fault on his part: Held, that the seller was not exempt from liability because the wringer had been previously accepted by the purchasers.—EMPIRE LAUNDRY MACHINERY CO. V. BRADY, Ill., 44 N. E. Rep. 486.

167. NEGLIGENCE—Liability to Rescuer.—Loss of life incurred in rescuing another from a situation of peril gives rise to no cause of action against one who is guilty of no negligence, either as to the person whose safety was imperiled, or as to the rescuer after his efforts to make the rescue had begun.—JACKSON V. STANDARD OIL CO., Ga., 26 S. E. Rep. 60.

168. NEGLIGENCE—Proximate Cause.—Hiring a boy in contravention of 3 How. Ann. St. § 1997c3, declaring it unlawful for a manufacturing establishment to hire a child under 14 years of age without the written consent of the parent, is not the proximate cause of his injury received from falling into uncovered cogwheels while scuffling with another boy.—BORCK V. MICHIGAN BOLT & NUT WORKS, Mich., 69 N. W. Rep. 254.

169. NEGLIGENCE—Street Railway.—It is the duty of a carriage driver not to obstruct the track of a trolley car.—CAMDEN, G. & W. RY. CO. V. PRESTON, N. J., 35 Atl. Rep. 1119.

170. NEGOTIABLE INSTRUMENT—Bona Fide Purchaser—Partnership.—A *bona fide* indorsee of a firm note payable to a member of the firm, taking the note from such member as security for his individual debt, is entitled, on the insolvency of the firm, to share with firm creditors in the firm assets.—BUCHANAN V. MECHANICS' LOAN & SAVINGS INSTITUTE, Md., 35 Atl. Rep. 1094.

171. NEGOTIABLE INSTRUMENTS — Consideration.—Where a statute prohibits the racing of horses for money, but not the breeding and owning of race horses, not given for an interest in race horses, under an agreement that they shall constitute partnership property of the parties to the notes in a partnership to be formed by them for the racing of horses for money, are not void, as being given for an illegal consideration.—BIEGLER V. MERCHANTS' LOAN & TRUST CO., Ill., 45 N. E. Rep. 512.

172. NEGOTIABLE INSTRUMENT — Notes Payable to Bearer.—Where one, to whom notes payable to bearer have been delivered without indorsement, for safekeeping only, transfers them after maturity, as his own, for a valuable consideration, his transferee is charged with notice, as against the owner, that the transferror held the notes merely as depositary.—QUIMBY V. STODDARD, N. H., 35 Atl. Rep. 1106.

173. OFFICERS—Clerks of Court—Failure to Turn Over Money.—In a suit on the bond of a clerk of court, conditioned to pay over all money received by him by reason of his office, for failure to turn over to his successor money deposited by one of the parties to an action, the record of the judgment in such action, containing a recital of the deposit with the clerk, and an order for the application thereof to the satisfaction of the judgment, is admissible.—MCCUNE V. PEOPLE, Colo., 46 Pac. Rep. 1083.

174. PARENT AND CHILD —Advancement — Presumption.—The presumption is that a conveyance of land by the parent to a child for a recited consideration, which was about three-fifths of the value of the land, and which was paid in board, taxes, etc., was not an advancement.—KIGER V. TERRY, N. Car., 26 S. E. Rep. 38.

175. PARENT AND CHILD—Custody of Minors.—In conflicting claims between parents for the custody of their legitimate minor children, the right of the father, at common law, is paramount to that of the mother; but the cardinal rule by which courts are governed in awarding the custody in such cases is the welfare of the child, and not the technical legal right.—MILLER V. MILLER, Fla., 20 South. Rep. 969.

176. PARTITION—Improvements by Cotenant.—When a cotenant has in good faith enhanced the value of part of the premises held in cotenancy, by making improvements thereon, the fruits of such expenditure and industry will be secured to the one making the improvements in a partition of the common property by allotting to him the parcel so enhanced in value, or as much thereof as represents his share of the whole tract, provided it can be done consistently with an equitable partition of the estate.—BOLEY V. SKINNER, Fla., 20 South. Rep. 1017.

177. PARTNERSHIP — Firm Assets.—A judgment rendered in an action upon a note executed by the members of a partnership jointly, but as individuals, the proceeds of which were not used for partnership purposes, is not a lien upon the partnership assets, as against a subsequent judgment rendered upon a firm debt.—WHELAN V. SHAIN, Cal., 47 Pac. Rep. 57.

178. PARTNERSHIP—Power of Partner to Bind Firm.—A firm carrying on the business of boring wells, buy-

ing materials for pumps and windmills, putting these materials together, and then placing these articles into wells bored by the firm, or already bored or dug by other parties, cannot be held, as a matter of law, to be a trading copartnership; each member having implied authority to borrow money for the use of the firm, and to execute and deliver negotiable paper therefor.—VETSCH v. NEISS, Minn., 69 N. W. Rep. 315.

179. PARTNERSHIP BY ESTOPPEL.—Though one may not actually be the partner of another person, he may, nevertheless, become liable as such a partner if he represent to persons dealing with himself and such other person that they are partners, and upon the faith of such representation a credit is extended to the supposed partnership of which he represents himself to be a member.—CARLTON v. GRISSOM, Ga., 26 S. E. Rep. 77.

180. PAYMENT—Check on Insolvent Bank.—A check, given to a customer of a bank in payment of an indebtedness, and accepted by both the payee and the bank, operates as payment of the indebtedness, without regard to whether it is drawn against funds, or is actually paid by the bank, where the account of the payee with the bank is at the time overdrawn to an amount larger than the check.—CONWAY v. SMITH MERCANTILE CO., Wyo., 46 Pac. Rep. 1084.

181. PAYMENT BY CHECK—Estoppel.—A check given and received, by agreement of the parties, as a payment of a debt, extinguishes the debt; and, if not paid, the right of action is on the check, and not on the original debt.—SUTTON v. BALDWIN, Ind., 45 N. E. Rep. 518.

182. PENALTIES — Cutting Trees on Land.—A purchaser of land, holding a bond for a deed, cannot recover from his vendor, under Code, § 3296, providing that any person cutting trees on land not his own, without the consent of the owner, shall pay to such owner a stated sum for each tree so cut. The statute is penal, and the purchaser is not the "owner" by legal title.—GRAVLEE v. WILLIAMS, Ala., 20 South. Rep. 952.

183. PLEADING — Abatement.—The objection that a minor cannot sue in his own name by his general guardian is matter in abatement only, and is waived if not taken by demurrer or answer.—WEBBER v. WARD, Wis., 69 N. W. Rep. 349.

184. PLEADING — Supplemental Complaint — New Cause of Action.—It is not proper to bring into a case, by supplemental complaint, new facts which have arisen since the action was commenced, and which by themselves constitute a new and independent cause of action, without reference to the facts alleged in the original pleading.—SWEDISH-AMERICAN NAT. BANK v. DICKINSON CO., N. Dak., 69 N. W. Rep. 455.

185. PRINCIPAL AND AGENT—Ratification—Estoppel.—Plaintiff having applied for a loan in a building association, the agent agreed that, in case the loan was not granted in 90 days, plaintiff should receive back the amount paid by him for entrance fees and dues. This was communicated to the association by the plaintiff, with an inquiry as to the time when he could get the money. The association replied to his inquiry, but did not refer in any way to the agreement of the agent, which it appeared was unauthorized: Held, that the silence of the association could not be construed as a ratification of the agreement estopping it from denying liability thereunder.—ATLANTA NAT. BUILDING & LOAN ASSN. v. BOLLINGER, Ark., 37 S. W. Rep. 1049.

186. PRINCIPAL AND SURETY — Probate Bonds.—Sureties on an administrator's bond cannot defend against liability thereon on the ground that they signed it with the understanding that it should not be delivered until certain other persons had also signed as sureties, where it was delivered by the custodian, who was an agent of the principal, and approved by the county judge, without knowledge of such condition, and there was nothing on its face to indicate that others were to sign.—BELDEN v. HURLBUT, Wis., 69 N. W. Rep. 357.

187. PRINCIPAL AND SURETY — Receiver's Bond.—The liability of sureties on a receiver's bond is properly enforced by independent action against them.—BLACK v. GENTERY, N. Car., 26 S. E. Rep. 48.

188. PRINCIPAL AND SURETY—Release of Principal.—Judgment was obtained against the principal on an injunction bond, and property sufficient to satisfy the same levied on. The plaintiff then agreed to release the levy, vacate the judgment, and take a new judgment against the principal and sureties, and make the amount thereof out of the sureties: Held that, by the release of the levy, the sureties were relieved of all liability.—THOMAS v. WASON, Colo., 46 Pac. Rep. 1079.

189. PUBLIC LANDS — Patent Issued by Mistake.—The holder of a certificate of entry issued by the United States made affidavit that he had made a mistake in respect to the land he intended to purchase and thought he was entering. The entry was set aside, the certificate surrendered and canceled, and the purchase money refunded to him. Afterwards a patent was inadvertently made out, and sent to the local land office, but before any acceptance on the part of such entryman the mistake was discovered, and the patent was recalled and canceled: Held, that the title did not pass from the United States.—WOOD v. PITTMAN, Ala., 20 South. Rep. 972.

190. QUO WARRANTO.—In *quo warranto*, it is incumbent on the respondent to show good title to the office the functions of which he claims to exercise.—STATE v. POWLES, Mo., 37 S. W. Rep. 1124.

191. RAILROAD COMPANY — Personal Injuries.—In an action for personal injuries, where the complaint alleges that defendant corporation owned and operated a railroad, and "permitted one of its trains to be run over and upon its said railroad by persons to whom the control and management of said train had been committed by defendant," and that plaintiff was injured in a collision caused by those in charge of defendant's train, it shows such a relation of defendant to the train and its operation as to render defendant responsible for the negligence of those operating it.—HIGHLAND AVE. & B. R. CO. v. SOUTH, Ala., 20 South. Rep. 1003.

192. RAILROAD COMPANY — Street Railway — Negligence.—Where the trial judge charged that it was the duty of the managers of a car operated by electric motors, at a high rate of speed, to give audible signals of the approach of the car, the non-performance of which duty was evidence of negligence, which, if the proximate cause of the injury complained of, was actionable, held, that the charge was free from error.—CONSOLIDATED TRACTION CO. v. CHENOWITH, N. J., 35 Atl. Rep. 1067.

193. RAILROAD COMPANY — Violation of Statute—Penalty.—Under Sand. & H. Dig. § 6200, subjecting railroads to a penalty, to be recovered by the prosecuting attorney in a civil action, for failure to comply with section 6196, in regard to ringing bells and sounding whistles, it is error for the court to try a violation of such act as a crime.—KANSAS CITY, FT. S. & M. RY. CO. v. STATE, Ark., 37 S. W. Rep. 1047.

194. RES JUDICATA—Judgment on Demurrer.—A judgment for defendant, on demurrer to a complaint for the recovery of land, on the ground that the complaint shows that defendant was entitled to curtesy, is *res judicata* as to defendant's right to curtesy, though erroneous.—LUTTRELL v. REYNOLDS, Ark., 37 S. W. Rep. 1051.

195. SALES—Contract—Acceptance.—Acceptance by a wholesale merchant of an order for the purchase of goods is not shown by evidence that the merchant wrote to the buyer, acknowledging the receipt of the order, and stating that it should have prompt attention.—MANIER v. APPLING, Ala., 20 South. Rep. 979.

196. SALES—Contract — Waiver of Warranty.—A provision that the failure of the buyer to settle for the machinery at the place of delivery, as required by the contract, shall be a waiver of the seller's war-

ranty, is binding.—ROBINSON & CO. v. BERKEY, Iowa, 69 N. W. Rep. 434.

197. SALE — Warranty. — A complaint alleging that plaintiffs informed defendant of the purpose for which they wanted a boiler; that he informed them that he had just what they wanted, a secondhand boiler, which was better than a new one; and that they, relying on his statements, paid him the price therefor, sufficiently alleges an implied warranty that the boiler was fit for the purpose for which it was bought.—FITZMAURICE v. POTERBAUGH, Ind., 45 N. E. Rep. 524.

198. SALE OF GOOD WILL—Action—Pleading.—Under the system of pleading which prevails in this State, an action may be brought against one who has sold out a given business, and contracted not to again carry on the same in a particular locality, both to recover such damages as may have accrued to the plaintiff from a breach of the contract up to the bringing of the action, and to restrain the defendant from a further violation of his agreement.—SWANSON v. KIRBY, Ga., 26 S. E. Rep. 71.

199. SCHOOLS—Validity of Contracts.—A contract for placing certain apparatus in a school building at a specified price, subject to its withstanding satisfactory tests, is not an appropriation of money, within the meaning of a city charter providing that all appropriations made by the board of education shall require a two-thirds vote of all the members.—SHORT CONRAD CO. v. SCHOOL DIST. OF EAU CLAIRE, Wis., 69 N. W. Rep. 387.

200. TAXATION — Assessment Roll.—In an action to enforce a lien for taxes assessed by the plaintiff city, proof that the assessment roll had been regularly certified was sufficient, *prima facie*, to authorize a decree of foreclosure against the defendant for the non-payment of taxes.—CITY OF OLYMPIA v. STEVENS, Wash., 47 Pac. Rep. 11.

201. TAXATION—Railroads—Sale for Taxes as "Lands."—For purposes of taxation, a railroad is "land," and under Act Feb. 9, 1895 "to dispose of lands which have been, or may hereafter be, sold for taxes and bid in for the State, and which have not been redeemed or purchased from the State," a certain number of miles of a railroad, apportioned by the State board of assessment to a certain county, which have been sold for taxes under orders of the probate court of such county and bid in for the State, may be sold as other lands.—PURIFOY v. LAMAR, Ala., 20 South. Rep. 975.

202. TAXATION—Tax Sale.—Under Acts 1891, § 78, providing that no sale of real property for taxes shall be invalid on account of the same having been charged in any other name than that of the rightful owner, a tax deed duly issued is effective as against a prior mortgage, even though the mortgagee had no notice of the sale.—POWELL v. SIKES, N. Car., 26 S. E. Rep. 38.

203. TAXES—Payment under Protest.—A payment of illegal taxes, made under protest, and to prevent the issuing of a tax warrant therefor, is not a voluntary payment, and may be recovered back, notwithstanding no warrant or other process had been actually issued for the collection of the same.—BOARD OF COM'RS OF WYANDOTTE COUNTY v. KANSAS CITY, FT. S. & M. R. CO., Kan., 46 Pac. Rep. 1013.

204. TAX SALE—Annullment.—Section 1610, Gen. St. 1894, provides that when a tax sale is declared void by a judgment of the court, stating for what reason the sale is annulled, the amount paid the State at the tax sale or for the tax title shall be refunded, with interest thereon: Held, this section does not apply to cases where, as between the party purchasing the tax title and the owner of the land, such purchase is merely a payment of the taxes.—EASTON v. SCHOFIELD, Minn., 69 N. W. Rep. 326.

205. TENDER.—Where a debtor states to his creditors that he has the money in the bank in the same building in which the conversation occurs, and is ready to pay the sum admitted by him to be due, but the creditor refuses to receive it, it is a good tender, though the money be not actually produced.—SMITH v. OLD DOMINION BUILDING & LOAN ASSN., N. Car., 26 S. E. Rep. 40.

206. TRESPASS—Possession — Evidence. — The mere fact that a person claiming under an invalid lease has changed the locks upon the leased building does not show such an actual possession as will render the owner of the paramount title guilty of trespass in taking possession.—RYAN v. SUN SING CHOW POY, Ill., 45 N. E. Rep. 497.

207. TRESPASS TO TRY TITLE—Recovery for Improvements.—Under the statute governing the recovery for improvements made in good faith, in an action of trespass to try title, several defendants in an action, claiming separate portions of the land sued for, which have been separately improved, cannot unite in making a single claim for all their improvements together, but each must make his own claim separately; and, on recovery by plaintiff, judgment should be rendered accordingly.—BENSON v. CAHILL, Tex., 37 S. W. Rep. 1088.

208. TRIAL — Instructions — Preponderance of Evidence.—In trover for conversion of timber, to which defendant pleaded limitations, an instruction requiring plaintiff to prove by a "clear" preponderance of the evidence that he had commenced his action within the period of limitations, in which the jury are also told that plaintiff must prove his right to recover by evidence that preponderates, so that their minds are not left unbalanced, and so that they "know" his right to recover exists, is erroneous, as requiring too strict a degree of proof.—HOFFMAN v. LOUD, Mich., 69 N. W. Rep. 231.

209. TRIAL—Juror—Disqualification.—A resident of a county is not disqualified on account of interest to act as juror in an action to recover land from the county.—EASTMAN v. BOARD OF COM'RS OF BURKE COUNTY, N. Car., 26 S. E. Rep. 39.

210. TRIAL—Jury—Action—Equitable Defense.—Rev St. 1894, § 412, provides that issues of law and of fact in causes that, prior to June, 1852, were of exclusive equitable jurisdiction, shall be tried by the court, and issues of fact in all other causes shall be triable as the same are now triable; that, in case of the joinder of causes of action which, prior to said date, were of exclusive equitable jurisdiction, with causes of action or defenses, which, prior to said date, were designated as actions at law, and triable by jury, the former shall be triable by the court, and the latter by a jury, unless waived, etc.: Held that, where a complaint states both equitable and legal causes of action, in separate counts, the causes of action may be severed, and those of a legal character be tried by a jury.—FIELD v. BROWN, Ind., 45 N. E. Rep. 464.

211. TRIAL—Personal Injuries—Physical Examination.—If plaintiff, suing for personal injuries, can on motion of defendant, be compelled to submit to a physical examination by a surgeon, it should be by one agreed on by the parties or selected by the court, and not one who has already testified against plaintiff.—HOUSTON & T. C. R. CO. v. BERLING, Tex., 37 S. W. Rep. 1083.

212. TRUSTS—Creation by Deed—Married Women.—Where a deed conveyed land to a named person, in trust for a married woman for life, and at her death to her children then living, "with power in said trustee, by and with the written consent of the (life tenant), to sell said property, and reinvest the same in other property, subject to the same limitations and restrictions," the power thus created conferred upon the trustee a special personal trust, and was therefore one which did not pass to a successor.—SIMMONS v. MCKINLOCK, Ga., 26 S. E. Rep. 88.

213. TRUSTS — Loss of Corpus — Apportionment. — Where a portion of a fund held in trust for the benefit of one person for life and another in remainder is lost by reason of the failure of the business in which it was

invested, the loss is to be apportioned between the life tenant and the remainder-man, so as to entitle the life tenant to a portion of the fund received on settlement of the business, to make up for the loss of income during the time the business was being settled.—GREENE v. GREENE, R. I., 35 Atl. Rep. 1042.

214. TRUST DEED — Action to Set Aside—Parties.—Where the owners of property convey it to a trustee upon specified terms and conditions, and one of them brings an action against the trustee to have the trust deed annulled and the trustee enjoined from acting or claiming thereunder, the other owners are necessary parties.—ROBINSON v. KIND, Nev., 47 Pac. Rep. 1.

215. TRUST DEED — Power of Sale. — Where a deed to realty expressly recites that it is made to secure a specified promissory note, payable to the grantee or order, and confers upon "the holder of said note" a power of sale, it is sufficiently certain that such deed intended to confer, and did confer, this power upon the original grantee therein, whether, as matter of law, the power would or would not pass to his assignee of the note.—RAY v. HOME & FOREIGN INVESTMENT & AGENCY CO., Ga., 26 S. E. Rep. 56.

216. USURY—Liability of Payee. — Under Code, § 3836, declaring that "the taking, receiving, reserving, or charging" a greater rate of interest than is allowed by the preceding section, when knowingly done, shall be deemed a forfeiture of the entire interest, "and in case a greater rate of interest has been paid," the person paying it may recover the amount so paid, etc., the mere contracting for usury forfeits all interest, and, in addition, its actual acceptance renders the payee liable for double the amount received by him.—SMITH v. OLD DOMINION BUILDING & LOAN ASSN., N. Car., 26 S. E. Rep. 42.

217. USURY—Loan to Pay Usurious Debt.—Where the lender of money neither charges nor receives any more than the legal rate of interest, the fact that the money was, with his knowledge, borrowed for the purpose of paying a debt infected with usury, due by the borrower to a third person, does not make the loan usurious.—THOMPSON v. FIRST STATE BANK OF DAWSON, Ga., 26 S. E. Rep. 79.

218. VENDOR AND PURCHASER—Assignment of Lien.—A vendor's lien on land for which a general warranty deed has been executed by the vendor to the purchaser is assignable.—DICKASON v. FISHER, Mo., 37 S. W. Rep. 1114.

219. VENDOR AND PURCHASER — Damages. — Where there is a contract to convey unimproved land with warranty of title, and the vendee, before conveyance is to be made, erects buildings upon the land without the request of the vendor, in an action on contract to recover damages for failure to convey, the vendor's title proving defective, the value of the buildings cannot be recovered by the vendee.—GERBERT v. CONGREGATION OF THE SONS OF ABRAHAM, N. J., 35 Atl. Rep. 1121.

220. VENDOR AND PURCHASER—Specific Performance.—Under a parol contract for the purchase of lands, part payment of the consideration, and delivery of possession of one of the parcels included in the contract, are sufficient to enable the purchaser to enforce a specific performance of the contract as to all the parcels.—BARTZ v. PAFF, Wis., 69 N. W. Rep. 297.

221. VENUE IN CIVIL CASES. — Under Sand. & H. Dig. §§ 7379, 7381, providing for change of venue in civil cases to a county "to which there is no valid objection," a judge of the circuit court may change the venue to a county outside of his judicial circuit.—PALATIN INS. CO. v. EVANS, Ark., 37 S. W. Rep. 1046.

222. WATERS—Irrigation — Abandonment.—An abandonment of an appropriation of water for irrigation by a locator on government land is shown by evidence that he quitclaimed his possessory right to the land without reservation of the water right, placing his grantee in possession of both, and that he left the State for three years, and claimed no interest in the water until after his return.—NICHOLS v. LANTZ, Colo., 47 Pac. Rep. 70.

223. WILLS—Construction. — Testator gave his wife a life estate, and directed that the remainder should be divided equally among his surviving children "and their heirs," share and share alike: Held, that the words of survivorship related to the death of testator, and not to the time of the widow's death.—GRIMMER v. FRIEDERICH, Ill., 45 N. E. Rep. 498.

224. WILL — Devise. — Where there is a devise to the use of the "Methodist Episcopal Church," and it appears that there are two organizations to whom the designation may apply, evidence is admissible to show that the legal name of neither organization comes within the very words of the will—one being "Trustees of the Methodist Episcopal Church;" the other, "Methodist Episcopal Church South,"—and that both were commonly known as the "Methodist Episcopal Church."—TILLEY v. ELLIS, N. Car., 26 S. E. Rep. 29.

225. WILLS — Devise of Mortgaged Land. — A specific devise of land, mortgaged by testator to secure his own debt, *prima facie* imports an intention that the debt shall be satisfied out of the general personal assets.—TURNER v. LAIRD, Conn., 35 Atl. Rep. 1124.

226. WILLS — Extrinsic Evidence. — Testator bequeathed to his wife, in trust for her maintenance and the maintenance of their unborn child, "12 shares in the steam barge J;" to the unborn child, in trust, 4 shares, which, should the child die before coming of age, were to be divided among four persons; to each of his daughters 4 shares; and to his two sisters 1 share, to be divided among four other legatees at their decease. It appeared that testator owned no such property as the barge referred to, which belonged to a transit company, and was its sole property; that testator owned 600 shares of stock in said company, of the par value of $50; that he had always spoken of his interest as shares of $1,000 each, and that when he drew his will he handed to the scrivener a memorandum in which he referred to the stock as "30 shares stock steamer J, $30,000:" Held, that "shares of stock in the steam barge J" should, in each bequest, be construed as 20 times that amount of stock in the transit company.—OADES v. MARSH, Mich., 69 N. W. Rep. 251.

227. WILL—Indefinite Charitable Bequest.—A bequest of the residue of testator's estate to "humanity's friend, B, to use and expend the same for the promotion of the religious, moral, and social welfare of the people in any locality, whenever and wherever he may think most needful and necessary," since it includes objects not charitable, must fail for indefiniteness.—LIVESEY v. JONES, N. J., 35 Atl. Rep. 1064.

228. WILLS—Revocation—Divorce.—An absolute revocation of a will cannot be implied by law from the obtaining of a divorce from the testator by his wife after the making of the will, the death of one of his children, for whom provision was made in the will, and the birth of three children to such deceased child, prior to the testator's death. — BAACKE v. BAACKE, Neb., 69 N. W. Rep. 303.

229. WITNESS—Impeachment.—The answer of defendant, on cross-examination, to a collateral question as to statements by him showing his ill will towards plaintiff, does not bind plaintiff, but he may, for purpose of impeachment, show by other evidence that defendant made the statements.—CATHEY v. SHOEMAKER, N. Car., 26 S. E. Rep. 44.

230. WITNESS—Interest — Competency.—An attorney at law, employed to collect a promissory note, and who has no contract with his client as to what fees will be charged, but expects to look to the client for reasonable compensation, is not interested in the case, so as to disqualify him from testifying as a witness for the plaintiff. This is true, although the witness may have testified that he had no other fee reserved except the 10 per cent. in the note sued upon.—JACKSON v. BENNETT, Ga., 26 S. E. Rep. 53.